(24,727)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 126.

THOMAS CUSACK COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF CHICAGO, CARTER H. HARRISON, MAYOR OF THE CITY OF CHICAGO, AND HENRY ERICSSON, COMMISSIONER OF BUILDINGS OF THE CITY OF CHICAGO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 1, 1916.

* * * * * * *

a-2 *Placita.*

Superior Court of Cook County.

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

Pleas before the Honorable Charles M. Foell, one of the judges of the Superior Court of Cook County, in the State of Illinois, holding a branch court of said court, at a regular term of said Superior Court of Cook County, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the first day, of June, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-eighth.

Present: The Honorable Charles M. Foell, Judge of the Superior Court of Cook County; Maclay Hoyne, State's Attorney; Michael Zimmer, Sheriff of Cook County.
Attest:
RICHARD J. McGRATH, *Clerk.*

Be it remembered that heretofore, to-wit, on the 21st day of July A. D. 1913, a certain Bill was filed in the office of the Clerk of said court, in words and figures following to-wit:

3 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

In Chancery.

To the Honorable the Judges of the Superior Court of Cook County, in the State of Illinois, in Chancery Sitting:

Your orator, the Thomas Cusack Company, respectfully represents unto your Honors as follows:

1. That your orator is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey. That your orator was incorporated in the month of September, 1903, and at the same time was duly licensed by the State of Illinois to do business in the State of Illinois as a foreign corporation, and your orator has ever since been so licensed. That your orator is engaged in the business of outdoor advertising by means of painted signs on buiietin boards and wall spaces and by means of metal and electric signs, such bulletin boards and electric sings being located on the roofs of buoldings or attached to the walls of buildings, or upon the ground, and your orator has been ever since its incorporation,

and now is carrying on its business in the City of Chicago and elsewhere in the State of Illinois and other States.

4 2. That the City of Chicago is a municipal corporation organized under and by virtue of the laws of the State of Illinois. That Carter H. Harrison is the Mayor of said City. That Henry Ericson is Commissioner of Buildings of said City. That John McWeeney is the Superintendent of Police of said City, and Charles F. Seyferlich is the Fire Marshal and Chief of Bridage of the said City.

3. That in order to carry on and conduct its business and to render service commensurate with the commercial needs and demands of its patrons, it has been and is necessary for your orator to acquire, and your orator has acquired and now holds, the right, license and permission, by lease or otherwise, to use parcels of ground, vacant lots, walls, buildings, and other spaces in and about the City of Chicago, and elsewhere, for the erection, painting and maintenance of bulletin boards, wall signs, and electric signs thereon, to advertise the wares, commodities and undertakings of its said customers. That your orator has expended large sums of money in procuring leases from the several owners or agents controlling the said lots or parcels of ground and buildings upon which said bulletin boards, wall signs, and electric signs are located, and your orator is paying as rental under said lease large sums of money annually. That said leases run for periods varying from several months to five years, respectively.

4. That in and about conducting its said business your orator has acquired and now is the owner of a large number of bulletin boards, walls signs, and electric signs, in the City of Chicago, on which your orator has been and is maintaining advertisement for its customers for hire, from which it is deriving a large amount

5 of money and profits per annum.

5. That all of your orator's painted and electric sings and bulletin boards are placed and maintained on private property, and none of the same are placed or maintained on public property. That many of your orator's said bulletin boards, wall signs and electric signs are located on vacant property in certain blocks in which one-half or more of the building on both sides of the street are used exclusively for residence purposes, and the bulletin boards and electric signs of your orator so located constitute an essential and most valuable part of your orator's advertising plant. That the property or spaces located on what are known as residence streets, particularly on boulevards and other streets used exclusively by pedestrians, automobiles and other pleasure vehicles in large numbers, furnishes and provides the most attractive, advantageous and valuable locations for out-door advertising, and for that reason your orator's customers demand that their advertisements be placed and maintained so far as possible, on property so located, and your orator is compelled to comply with said demands, or lose the patronage of such customers.

6. That each and all of your orator's bulletin boards, electric signs, wall signs, and other signs, now situated and maintained on what are known as residence streets, particularly on vacant property, in certain blocks in which one-half or more of the buildings on both

sides of the street are used exclusively for residence purposes,
6 were so located and placed upon said property under and by virtue of permits duly issued by the City of Chicago to your orator, and were erected and constructed in a safe, substantial and workmanlike manner, and are in all respects safe, sanitary and lawful structures and signs, and are not injurious to the public health, safety, comfort and welfare, and do not endanger the lives and safety of persons passing by or along the same or standing in close proximity thereto, and do not interfere in any respect with the full and complete use and enjoyment of the public streets, boulevards and parks in the city of Chicago, by the inhabitants of said city of any other person or persons, nor with the full and complete use and enjoyment of the private residences and homes located within such blocks by the owners or occupants thereof. That the said bulletin boards, wall signs and electric signs comply in all respects with the valid laws of the State of Illinois and the valid ordinances of the City of Chicago, and are built and maintained in such manner as not to create a nuisance in fact or in law. That your orator has not painted or caused or permitted to be painted, or placed or maintained upon any of said bulletin boards, wall signs or electric signs any advertisement or other matter injurious to the health or morals of any person in the city of Chicago or elsewhere.

7. That your orator has invested in its business a large amount of capital, and has built up and is maintaining a large and extensive plant, and furnishes employment for several hundred skilled workmen, artists, clerks, solicitors, salesmen and other employes. That the business of your orator has grown into a vast and important enterprise and your orator has established a good name and reputation for honest and effective service in out-door advertising, and its service has become a commercial necessity to many enterprises doing lawful business in the City of Chicago, and elsewhere.

7 8. That the business carried on by your orator is a lawful one and does not in any manner conflict with any valid law of the United States of the State of Illinois, or with any valid ordinance of the City of Chicago. That your orator is a tax payer, paying a large amount of taxes upon its property in the City of Chicago.

9. That there is now, and has been since December 5, 1910, in force in the City of Chicago an alleged ordinance relating to and governing the erection and maintenance of bulletin boards, bill boards and signs of the kind and character erected and maintained by your orator in said City. That in and by the provisions of said alleged ordinances, parties desiring to erect and construct bulletin boards, bill boards, or signs, in the City of Chicago, are required to procure a permit for the purpose from the Commissioner of Buildings in said City.

10. That on or about the 14th day of August, A. D. 1912, your orator entered into a written lease with one L. R. Williams, who was then and there the owner of certain vacant lots or parcels of land known as Lots one (1) and Two (2) in Block Two (2) in Pleg Hall's Addition to Chicago in the Northwest fractional quarter of Section Twenty one (21), Township Forty (40), North, Range

Fourteen (14) East of the Third Principal Meridian, in Cook County, Illinois, and also known as the two hundred and thirty five (235) feet, more or less, of vacant property next east and adjoining number 628 Sheridan Road, in the City of Chicago, wherein and whereby the said L. R. Williams granted, demised and leased to your orator the sole and exclusive right to erect and maintain bulletin boards and signs boards upon said Lots 1 and
8 2 for a long period of time, and your orator agreed to pay to the said lessor for the use of said lots for the purpose aforesaid a large sum of money per annum.

11. That on or about the 8th day of May A. D. 1913, your orator being desirous of erecting and maintaining a bulletin board on said Lots 1 and 2, above described, applied to the Commissioner of buildings of the City of Chicago for a permit to erect and maintain the said signs at the location aforesaid, and thereupon a license or permit was duly issued by Henry Ericson, the Commissioner of Buildings of said City, bearing date the eighth day of May, 1913, authorizing your orator to erect and maintain a bill board or bulletin board on the premises aforesaid, as contemplated by your orator, and your orator paid to the City Collector of said City the sum of Sixteen Dollars ($16.00) for said permit, said sum the proper amount to be paid for such permit under the provisions of said alleged ordinance, That said permit was in words and figures, following:

"City of Chicago—Depratment of Buildings.

Office of the Commissioners of Buildings.

No. A. 77536. May 8, 1913.

Permission is hereby granted to Thos. Cusack & Co. to erect a bill board 200 ft. front by — feet deep, — feet high from ground level to highest part thereof, — No. 614/28 Sheridan Rd.

This permit is granted upon the express condition that the said Thos. Cusack in the erection of said building shall conform in all respects to the ordinances of the City of Chicago, regulating the construction of buildings in the city limits, and may be re-
9 voked at any time *time* upon the violation of any of the provisions of said ordinances.

By order of the Commissioner of Buildings, Henry Ericson, Commissioner of Buildings.

Amount of permit, $16.00.

Received the amount indicated thereon.

EDWARD COHEN,
City Collector."

Not valid unless receipted by the City Collector."

12. That subsequent to the issuing of said permit, and relying thereupon, your orator proceeded to purchase, and caused to be prepared, the necessary material for the said proposed bulletin board

and caused the said bulletin board to be erected and constructed at the location and upon the property described as aforesaid, and caused to be painted upon said bulletin board, when completed, four advertising signs, and that your orator has ever since kept and maintained the said bulletin board with the said display signs painted thereon at the location and upon the premises above described.

That your orator incurred and paid large sums of money in purchasing and causing to be prepared the material necessary for the construction of said signs, and in and about the erection and construction of said bulletin board and signs.

13. That notwithstanding the fact that a permit was issued by the City of Chicago to your orator for the erection and maintenance of said bulletin as aforesaid, and of the fact that your orator, in reliance thereupon, at a great cost and expense, caused the erection and construction of the said bulletin board and the painting of the said advertising signs thereon, the said City of Chicago, without just cause or reason, on the 17th day of July, 1913, notified and directed your orator to remove the said bulletin board from the premises aforesaid within forty-eight (48) hours after the said 17th day of July A. D. 1913, and in the event of the failure of your orator to so remove the said bulletin board, the said City of Chicago threatened to cause the same to be taken down and removed by the Fire Department of said City.

That the said notice is in words and figures as follows: to wit:

Department of Buildings, Chicago.

Room 702 City Hall.
Henry Ericson, Commissioner.
Robert Knight, Deputy Commissioner.

July 17th, 1913.

Thos. Cusack Co., W. 15th & Throop Sts., City.

You are hereby notified as owner, agent, lessee or occupant of premises known as 614—28 Sheridan Road, to comply with the following requirements of the Revised Municipal Code, within forty-eight hours after date.

Remove this bill board within the aforesaid time, or same will be taken down by the Fire Department.

"Final Notice."

Personal Delivery.
J. McH.

Failure to comply with this notice within the aforesaid time will result in matter being placed in the hands of the Law Department for prosecution.

Respectfully yours,

HENRY ERICSSON,
Commissioner of Buildings.

11 That prior to the time that your orator received the said notice of July 17, 1913, the said bulletin board had been fully and completely erected and constructed, and the said four signs had been completely painted thereon, and that the said signs were at the said time in a finished condition and maintained by your orator as a part of its advertising plant in the said City of Chicago.

15. That the only ground upon which the City of Chicago has based its pretended right or authority to require your orator to remove the said bill board, or in the event that your orator failed of refused to so remove the same, then to cause the said sign to be removed by the Fire Department or some other agency of the said city, and upon which the said City bases its refusal to permit your orator to, maintain the said bulletin upon the premises aforesaid, is the provisions of a certain section of the alleged ordinance of December 5, 1910, hereinbefore mentioned, which said section of said pretended ordinance is known as number 707 and is in the following words and figures:

"Frontage Consents Required: It shall be unlawful for any person, firm or corporation to erect or construct any bill board or sign board in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the peoperty on both sides of the street in the block in which such bill board or sign board is to be erected, constructed or located, Said written consents shall be filed with the Commissioner of Building- before a permit shall be issued for the erection, construction of such bill board or sign board."

12 16. Your orator further represents that the said section 707 of said alleged ordinance is wholly null and void and of no force and effect, for the following reasons, among others:

(*a*) Said section 707 unjustly and unlawfully discriminates against the owners of property not used for residence purposes, and located in any block on any public street in said city in which one half of the buildings on both sides of the street are used exclusively for residence purposes, and unjustly and unlawfully discriminates against the owners of vacant property located in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes.

(*b*) Said section 707 unjustly, improperly and unnecessarily restricts the use which can be made of private property located in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes.

(*c*) The provisions of said section 707 will amount to the taking of your orator's property for public use without compensation.

(*d*) The provisions of said section 707 amount to the taking of private property located in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence pusposes, for public use without compensation.

(*e*) The provisions of said section 707 deprive your orator and the owners of property located in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes of equal protection of the laws.

(*f*) The enactment and enforcement of said section 707
13 was not and is not a reasonable or proper exercise of any power or authority vested in the City of Chicago to license street advertising by means of bill boards, sign boards and signs, and to regulare the character and control the regulation of such bill boards, sign boards and signs upon vacant property and upon buildings.

(*g*) The enactment and enforcement of said section 707 was not and is not a reasonable or proper exercise of the Police power of the City of Chicago.

(*h*) The provisions, requirements, restrictions and prohibitions established or contained in the said section 707 are not necessary for the protection of the Public health, safety, morals, comfort or welfare.

(*i*) That each and all of the provisions of said section 707 are unjust, unreasonable, confiscatory and oppressive.

(*j*) Said section 707 does not have uniform operation as to the classes upon which it pretends to operate.

(*k*) Said section 707 deprives owners of vacant property located in any block on any public street in the City of Chicago in which one half of the buildings on both sides of the street are used exclusively for residence property, of the right to use or improve such property for a lawful purpose without any compensation.

(*l*) Said section 707 deprives, without any compensation, the owners of property improved otherwise than by private residences, and located in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes, of the right to use their said property for a lawful purpose.

14 (*m*) The provisions of said section 707 do not apply to similar structures located in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes and not used for bulletin boards or sign boards.

(*n*) Said section 707 is designed and intended to destroy or seriously injure the lawful business carried on by your orator in the City of Chicago.

(*o*) Said section 707 is based solely upon purely æsthetic reasons or considerations and not upon any necessity for such restrictions as it imposes.

(*p*) The provisions of said section 707 go far beyond the regulations or restrictions necessary for the protection of the lives, morals, safety and property of the citizens or residents of the City of Chicago, or of the lives and safety of persons using the public streets, parks and boulevards of said city, or for full use and enjoyment of the said public parks, boulevards and city streets, by the inhabitants of said City, or by other person or persons.

(*q*) The provisions of said section 707 go far beyond the regula-

tions or restrictions necessary for the full use and enjoyment, by the owners or occupants of residence property or residence buildings or other property located in any block upon any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes.

(*r*) Said section 707 unlawfully discriminates against the business in which your orator is engaged.

(*s*) Said section 707 in its provisions amounts to a denial to persons in the City of Chicago of the equal protection of the laws.

(*t*) Said section 707 in and by its provisions amounts to
15 an unreasonable, unjust and oppressive invasion or interference with the use of private property by your orator and by the owners of private property located in any block upon any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes.

(*u*) The provisions of said section 707, if enforced, will deprive your orator of its property without due process of law.

(*v*) Said section 707 is unconstitutional and destructive of your orator's rights, both under the constitution of the State of Illinois and the Constitution of the United States of America.

(*w*) Said section 707 deprives your orator and the owners lessees, and occupants of lands and buildings located in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes of their liberty without due process of law, to-wit: the liberty of maintaining, erecting and displaying, and permitting to be erected, maintained and displayed, upon any property in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes, bulletin boards, bill boards, or sign boards, so constructed and maintained as not to injure the morals, health, comfort, safety and welfare of the public, thus depriving your orator of the liberty of carrying on a lawful business without unreasonable restrictions, and depriving your orator and such owners, lessees and occupants of making a beneficial, lawful and profitable use of their property.

16 (*x*) The provisions of said section 707, if enforced will deprive the owner of real estate, in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes, of the right and privilege of advertising for sale his property so located, or will unnecessarily restrict or interfere with such owner in advertising his said property for sale by means of advertisements upon bulletin boards or bill boards located on his said property.

(*y*) Said section 707, if enforced, will deprive persons carrying on business upon any property located in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes, of the right or privilege of advertising their own business carried on upon said property by means of painted signs on bulletin boards or bill boards located on such property.

(*z*) Said section 707, in and by its provisions, will subject the right of any owner, lessee or occupant of any real estate located in any

block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes, to use the property so owned leased or occupied by them and located withon such block to the whim and pleasure of the owners, or duly authorized agent of such owners, owning a majority of the frontage of the property on both sides of the street in such block.

(*aa*) The provisions of said section 707 constitute an improper and unlawful delegation of legislative power, or municipal power, to the owners or duly authorized agents of such owners owning a majority of the frontage of property on both sides of the street in any block in which one half of the buildings on both sides of the street are used exclusively for residence purposes.

17 (*bb*) Said Section 707, in and by its provisions, places the lawful use of private property located in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes under the control, or subject to the consent, of persons or parties not owning or having any property interest therein, but owning a majority of the frontage of the property on both side- of the street in such block, and pretends to grant to the owners of the majority of such frontage the right to determine the use to which the owner of other property within such block may put the same, and the right to prevent the owner of such property to make a lawful use thereof, if such use is not in harmony with the whims, wishes or æsthetic tastes of the owners of the majority of such frontage.

(*cc*) Said Section 707, and each and every provision thereof, if enforced, will deprive your orator of its liberty and property without due process of law in violation and in contravention of the Fourteenth Amendment to the Constitution of the United States and in violation and contravention of Article Two of the Constitution of the State of Illinois.

(*dd*) Said Section 707, and each and all of the provisions thereof, if enforced, will deny to your orator the equal protection of the laws in violation and in contravention of the Fourteenth Amendment to the Constitution of the United States and violation and contravention of the Constitution of the State of Illinois.

(*ee*) Said Section 707 and each and all of the provisions thereof, if enforced, will constitute a taking of your orator's private property for public use without just compensation, in violation and in contravention of the Fifth Amdendment to the Constitution of the United States.

18 (*ff*) Said Section 707, and each and all provisions thereof, if enforced, will deprive your orator of its liberty and property, without due process of law, in violation of the Fifth Amdendment to the Constitution of the United States.

(17) That upon receipt of said notice from the Commissioner of Buildings of the City of Chicago, your orator, through its representatives, called upon the said Commissioner of Buildings and protested against the proposed and threatened action of compelling your orator to remove the said bulletin board from the premises aforesaid, or causing the removal thereof by the Fire Department of the said

City, in the event that your orator should not remove the same, but the said Sommissioner of Buildings refused to change or withdraw such notice, and informed your orator's representative that the said action by the city of Chicago threatened in and by the said notice would be promptly taken by the said City of Chicago in the event that your orator failed to comply with the requirements of said notice and failed to remove the said bulletin board within the time specified in said notice, or unless your orator would comply with each and all of the provisions of said Section 707.

(18) That the said City of Chicago now threatens, through its Commissioner of Buildings, Police Department and Fire Department, to cause the said bulletin board so erected and maintained by your orator upon the premises aforesaid, to be taken down and removed and destroyed, and the said City will carry out its said threat and will cause the said bulletin board to be taken down, removed and destroyed unless such action is enjoined or restrained by this Honorable Court.

(19) That the provisions of said section 707, subject the right of your orator and of the owners and lessees of property located in any block in which the property on both sides of the street is used exclusively for residence purposes, to use such property for the
19 purpose of erecting and maintaining bill boards, bulletin boards, or other lawful structures thereon, other than residences, so completely to the whims and caprices of the owners or authorized agents of owners of the majority of the property fronting on such street within such block that if your orator were compelled to comply with such provisions and obtain the frontage consents provided for in said section 707, any one of more unreasonable or capricious owners or agents in such block could prevent your orator from obtaining the sufficient frontage consents under the provision of said ordinance, and your orator would be thus, without just cause or reason, deprived of a lawful and reasonable use of his property.

(20) That at and shortly after the time of the erection and construction of said bulletin board your orator entered into a contract with certain of its advertising customers whereby your orator undertook and agreed to place and maintain upon said bulletin board the signs and advertisements hereinbefore mentioned which pertain to the business carried on by the said customers, and your orator undertook and agreed to keep and maintain the said advertising signs upon the said bulletin board for the said customers for various long period- of time, for a valuable consideration to be paid therefor by the said customers to your orator, and that each and all of the said contracts of your orator with the said customers are now in full force and effect and have still long periods to run.

(21) That the location at which your orator caused the said bulletin board to be erected, as aforesaid, and upon which it contracted with its said customers to maintain said signs, is of special value to your orator and its said customers on account of
20 its prominent and commanding position, being adjacent to one of the most heavily traveled streets in the City of Chicago, where the said signs are and will be seen by many thousands of

people, both residents of the City of Chicago and its suburbs and by strangers visiting the city, and is and will be a great value to your orator's said customers inasmuch as it will bring the wares or articles of manufacture of said customers to the notice of the public in an *ew*pecially effective manner.

(22) That your orator is unable to find another lo*aac*tion of equal prominence and importance elsewhere in the said City, or equally satisfactory to your orators' said customers whose signs are displayed upon the said bulletin board, or another location which your orator can substitute therefor. That in addition to the contract price that your orator will receive for the signs maintained upon the said bulletin board, your orator will also derive special *and* advantage, which cannot be accurately estimate- in money, in prestige among advertisers by furnis*g*ing to its customers signs advantageously located and of such great and special benefit.

(23) That the said bulletin board so erected and maintained by your orator upon said lots one and two is beautiful, artistic and attractive in design, and is built in a good, safe, strong substantial and workmanlike manner, and the face of said bulletin board is entirely of metal construction and fireproof, and the supporting structure of said bulletin board is of heavy and substantial timbers; that the said bulletin board and the said sign painted thereon are in every respect safe, clean, moral, wholesome and sanitary and present the highest type of artistic outdoor advertising structure ever erected.

21 24. That the said bulletin board and the signs maintained thereon do not offend in any respect against public morals, safety, comfort, health or welfare, and are in strict compliance with all valid laws of the State of Illinois and all valid ordinances of the City of Chicago.

25. That the erection and maintenance of said bulletin board and signs, at the location aforesaid, do not interfere with the free, complete and convenient use and enjoyment of the private homes or residences located within the block and on the street in and upon which said bulletin board is located.

26. That the said bulletin board is brilliantly and beautifully illuminated at night, furnishing light for said locality which otherwise would be in darkness, and the said bulletin board does not in any manner obstruct or interfere with any attractive view of either water or landscape that might be secured or enjoyed if the said bulletin board were not in existence.

27. That the said bulletin board is located farther back upon said land from the public street than the building located upon the land adjoining the *sight* upon which said bulletin board is located and the same does not approach nearer to the public street than any other building or structure in said block.

28. That under its contracts with its said customers your orator is liable, in addition to other penalities provided for therein, to any loss or damage that may be sustained by the said customers in case your orator fails or is unable to maintain the said signs as provided in the said contracts.

29. That your orator is unable to estimate in money the benefit or advantage that will be derived by your orator and its said customers through or by means of said signs upon the said bulletin board, or the loss that will be sustained by your orator and
22 the said customers in the event that it is prevented from maintaining the said bulletin board and the said signs thereon, but your orator alleges that the loss will be very great and will amount to many thousands of dollars.

30. That *is* your orator is unable to maintain the said bulletin board and the said signs thereon, or is prevented from maintaining the same at the location aforesaid, your orator will not only be subjected to the financial loss represented by the cost of erection, construction and painting of said bulletin board and signs, but will also suffer great and irreparable damage through loss of prestige and good will among advertisers, and your orator's reputation for successful and efficient service in this line of business will be seriously damages and impaired.

31. That the said section 707, being null and void for the reasons hereinabove set forth, does not furnish any valid excuse or justification for the threatened action of the City of Chicago of requiring your orator to obtain frontage consents as provided in said section or to take down or remove the said bulletin board in the event of your orator's failure or inability to obtain such frontage consents, or causing the removal and destruction of such signs in the event that your orator fails to obtain such frontage consents, or to remove the said bulletin board pursuant to the said notice of July 17, 1913, and the said city of Chicago has no right or authority to prevent or interfere with the erection and maintenance of the said bulletin board and signs by your orator at the location aforesaid.

32. Your orator further represents that the said city of Chicago has refused and will continue to refuse, solely on the ground of the provisions of said section 707, to grant to your orator permits to erect other bulletin b*a*ords or signs on property located in any block on any public street in which one half of the buildings on
23 both sides of the street are used for residence purposes, unless your orator shall obtain frontage consents as provided in said section, and the said City of Chicago will also attempt to compel your orator to procure frontage consents for the maintenance of other bulletin boards and signs already erected, or in the event of your orator's failure to procure such frontage consents, then to remove such other bulletin boards and signs heretofore erected by your orator under permits from the Commissioner of Buildings in the City of Chicago upon other property in certain blocks on certain streets in which one half of the buildings on both sides of such streets are used exclusively for residence pusposes, and that said City of Chicago has already notified your orator to procure frontage consents for or remove certain of its othee bulletin boards and signs so located.

33. That the said City of Chicago has attempted and will continue to attempt to enforce in other respects and with reference to other bulletin b*a*ords and signs of your orator, the provisions of said

section 707, unless restrained by the injunction of this Honorable Court; that if the City of Chicago persists in such attempts to enforce the provisions of said section 707, in compelling your orator either to procure frontage consents as required by said section 707, or to remove all bulletin boards and signs to which said section 707 relates, your orator will be deprived of and lose an essential and important part of its plant in the City of Chicago and will suffer great and irreparable loss and damage which cannot be estimated or determined in an action at law.

34. That your orator has secured and now has outstanding contracts from and with merchants, inductrial enterprises, commercial institutions and other concerns or parties, to represent and advertise their wares, goods, merchandise, industries and undertakings by means of your orator's bulletin boards, electric signs and other signs, erected and located both on property used for business purposes or upon vacant property in business districts in the City
24 of Chicago, and bulletin boards, electric signs and other signs erected and located on private property in certain blocks upon certain public streets in which one-half of the buildings on both sides of the street are used exclusively for residence purposes, from whom your orator receives a large amount of money and profits per annum. That in and by said contracts, your orator has obligated and bound itself, and is and will be obligated and bound to erect and maintain such bulletin boards, electric signs and other signs upon such various classes of property and upon such various locations, and to maintain the advertisements of such customers and thereon continuously during the respective periods for in and by said contracts, that the said contracts run for different periods of time, varying from four months to several years, and many of said contracts contain provisions granting to the customers with whom your orator has so contracted the privilege of renewing and extending the same for further periods of time. That some of the said contracts provide for heavy penalities to be suffered and paid by your orator in the event of its inability or failure to maintain the advertisements of such customers on the said bulletin boards, electric signs or other signs, continuously during the full period for which said contracts have been made. That in addition to such penalties your orator will, in the event of the destruction or removal of its said bulletin boards or signs located on private property in the various blocks on public streets in which one-half of the buildings on both sides of the street are used exclusively for residence purposes in the City of Chicago, or the non-performance by your orator of its several contracts providing for the main-
25 tenance of advertisements upon such bulletin boards or signs, suffer irreparable damage and injury and become liable for other large amounts under said contracts, and will be liable for and obligated to continue paying the rents by it agreed to be paid to the owners of the spaces acquired by your orator for the purpose of erecting and maintaining said bulletin boards and signs and of carrying out its contracts with its said customers, and made useless by your orator's inability to maintain its bulletin boards and signs

thereon, and your orator will lose possible future contracts and earnings from its customers, and will be unable to furnish reliable and uniform servise to its customers, who will, on that account, refuse to contract further with your orator, and your orator will thereby be deprived of a lawful and profitable business which it has the right to lawfully carry on.

35. That if your orator is prevented from erecting and maintaining bulletin boards and signs upon private property in any block upon any public street in said city in which one-half of the buildings on both sides of the street are used exclusively for residence purposes, it will be deprived of advantageous and valuable locations in the City of Chicago which it will be impossible to replace with other locations or spaces, and your orator's advertising customers will lose the benefit of the advertising which your orator is under contract to furnish them, and will cancel their contracts and cease doing business with your orator, and will compel your orator to answer to them in damages for the loss of the advertising so contracted for, and that the loss that your orator will sustain in that regard cannot be definitely estimated in money.

26 36. That unless the said City of Chicago and its proper officers are restrained by the injunction of this Court from enforcing the provisions of said section 707, the said city will continue to refuse permits to your orator to erect lawful signs or bulletin boards on private property located in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence pueposes unless your orator procures frontage consents as provided in said section, and will remove and destroy, or compel your orator to remove, any and all bulletin boards and signs now owned and maintained by your orator and located on private property in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes, inless your orator can and will procure the frontage consents provided for in said section, and that thereby your orator will be greatly and irreparably damaged, the loss and damage thereby sustained by your orator being incapable of definite ascertainment. That your orator has no adequate remedy at law in the premises. That if your orator were compelled to resort to the courts of law for relief from the enforcement of said section 707, it would be involved in numerous and expensive lawsuits with the City of Chicago, and your orator's employees and workmen engaged in the work of erecting, painting and installing such bulletin boards, electric signs and other signs would be subjected to repeated arrests and prosecutions, and your orator would be unnecessarily harassed and its business constantly interfered with and jeopardized. That for all of the reasons aforesaid your orator can obtain adequate relief only in a court of equity.

27 Forasmuch, Therefore, as your orator is without adequate remedy in the premises, except in a court of equity; and to the end that the said defendants, the City of Chicago; Carter H. Harrison, Mayor of the City of Chicago; Henry Ericson Commis-

sioner of Buildings of the City of Chicago; John McWeeney Superintendent of Police of the City of Chicago; and Charles F. Seyferlich, Fire Marshal and Chief of Brigade of the City of Chicago, all of whom are made defendants to this bill of complaint, may be required to make full and direct answer to this, your orator's bill of complaint (but not under oath, their answers under oath being hereby waived); that the said section 707 of the alleged revised Code of the City of Chicago, passed by the City Council of Chicago December 5, 1910, which said section is hereinabove set forth, may be found and decreed to be unconstitutional, null and void, and of no force and effect; that the said defendants and each of them and their officers, agents, attorneys and servants, and each of them may be permanently restrained and enjoined from in any manner enforcing or attempting to enforce against your orator the provisions of said section 707, or any of them, and from taking down, removing, destroying or in any manner interfering with, or causing to be taken down, removes, destroyed or in any manner interfered with, the said bulletin board- erected and maintained by your orator upon lots one (1) and two (2) in Block two (2) in Peleg Hall's addition to Chicago in the Northwest fractional quarter of section twenty-one (21) Township forty (40) North Range — (14), East of the Third Principal Meridian, situated in the City of Chicago, County of Cook, Illinois, and from taking down, removing, destroying or in any manner interfering with, or causing to be taken down, removed, destroyed or in any manner interfered with, all or any other bulletin boards electric signs, or other signs,

28 *or other signs*, owned, erected, or maintained or controlled by your orator and located upon private property in any block upon any public streets in the City of Chicago in which one half of the buildings on both sides of the street are used exclusively for residence purposes and from in any manner hindering, molesting, prosecuting or interfering with your orator or its employes under the authority of said section 707 in the erection or maintenance of bulletin boards, electric signs or other signs upon property located in any block upon any public street in the City of Chicago, in which one half of the buildings on both sides of the street are used exclusively for residence pueposes.

That upon the filing of this bill a temporary injunction may be issued forthwith, restraining the said defendants and each of them, and their officers, agents, attorneys and servants and each of them as above prayed, until the further order of this court; and that your orator may have such other and further relief in the premises as equity may require and to your Honors shall seem mmet.

May It Please Your Honors, to grant to your orator the writ of summons in chancery, directed to the Sheriff, of said County of Cook, commanding him that he summon the defendants, the City of Chicago, Carter H. Harrison, Mayor of the City of Chicago, Henry Ericson, Commissioner of Buildings of the City of Chicago; John McWeeney, General Superintendent of Police of the City of Chicago and Charles F. Seyferlich, Fire Marshal and Chief of Brigade of the City of Chicago, to be and appear before this Honor-

able Court on the first day of August Term A. D. 1913, of said Court, to be held at the Court House in the City of Chicago, in
29 said Cook County, then and there to answer this bill.

And may it please your honors, to grant your orator the People's Writ of Injunction, directed to the said defendants, restraining them, and each of them, their officers, agents, attorneys and servants from in any manner enforcing or attempting to enforce against your orator the provisions of said section 707 or any of them, and for taking down, removing, destroying or in any manner interfering with, or causing to be taken down, removed, destroyed or in any manner interfer*ing* with, the said bulletin boards erected and maintained by your orator upon Lots One (1) and Two (2) in Peleg Hall's Addition to Chicago in the Northwest fractional quarter of Section Twenty one (21) Township forty (40) North, Range Fourteen (14) East of the Third Principal Meridian, situated in the City of Chicago, County of Cook, Illinois, and from taking down, removing, destroying or in any manner interfering with, or causing to be taken down, removed, destroyed or in any manner interfered with, all or any other bulletin boards, electric signs or other signs, owned, erected, maintained or controlled by your orator and located upon private property in any block upon any public street in the city of Chicago in which one half of the buildings on both sides of the street are used exclusively for residence purposes, and from in any manner hindering, molesting, prosecuting or interfering with your orator or its employees, under the authority of said section 707, in the erection of bulletin boards, electric signs or other signs upon property located in any block upon any public street in the City of Chicago in which one half of the buildings on both sides are used exclusively for residence purposes, until the further order of this Court.

(Signed) THOMAS CUSACK COMPANY,
By JOHN S. HUMMER,
Its Solicitor.

(Signed) JOHN S. HUMMER,
Of Counsel.

30 STATE OF ILLINOIS,
County of Cook, ss:

James M. Loughlin, being first duly sworn, deposes and says that he is the duly authorized agent in this behalf of the compiainant, Thomas Cusack Company, and makes this affidavit for and on behalf of said complainant.

This affiant further states that he has read the above and foregoing bill of complaint, and knows the contents thereof, and that he is familiar of his own knowledge with the facts, therein alleged.

Affiant further states the said bill of complaint, and each and all of the allegations thereof, are true in substance and in fact.

(Signed) JAMES M. LOUGHLIN.

Subscribed and sworn to before me this 21st day of July, 1913.

(Signed) J. GRAFTON PARKER,
Notary Public.

31 Thereup[illegible] on the same day to wit on the 21st day of July A. D. 1913, a certain People's Writ of Summons issued out of the Office of the Clerk of said Court and under the Seal thereof directed to the Sheriff of Cook County to execute which writ together with the return of the Sheriff thereon endorsed are in words and figures following to wit:

Form 19.

Chancery Summons.

Superior Court of Cook County.

STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to the Sheriff of said County, Greeting:

We command that you summon the City of Chicago, Carter H. Harrison, Mayor of the City of Chicago; Henry Ericsson, Commissioner of Buildings of the City of Chicago; John McWeeney, General Superintendent of Police of the City of Chicago, and Charles F. Seyferlich, Fire Marshal and Chief of *Bridag* of the City of Chicago, if they shall be found in your County, personally to be and appear before the Superior Court of Cook County on the first day of the term thereof, to be held at the Court House, in Chicago, in said County, on the first Monday of August, A. D. 1913, to answer unto Thomas Cusack Company in its certain Bill of Complaint filed in said Court on the Chancery side thereof.

And have you then and there this Writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Richard J. McGrath, Clerk of our said Court, and the Seal thereof, at Chicago, aforesaid, this twenty-first day of July A. D. 1913.

RICHARD J. McGRATH, *Clerk.*

31½ [Endorsed:] 302,653. Superior Court of Cook County. Returnable to —— Term, A. D. 191-. Thomas Cusack Company vs. City of Chicago et al. Summons in Chancery. John S. Hummer. Solicitor.

Pd. 6.75.

Served this writ on the within named defendant, The City of Chicago, a municipal corporation, by delivering a copy thereof to Carter H. Harrison, Mayor of said City this 24 day of July, 1913, also served this writ on the within named defendants Carter H. Harrison, Mayor of the City of Chicago, and Henry Ericsson, Com. of Bldgs. of City of Chig., by delivering a copy thereof to each of them this 24 day of July, 1913, also served this writ on the within named defendant, John McWeeney, General Superintendent of Police of the

City of Chicago, & Charles F. Seyferlich, Fire Marshal & Chief of Brigade of the City of Chicago, by delivering a copy thereof to each of them this 24th day of July, 1913.

MICHAEL ZIMMER, *Sheriff*,
By JOHN E. OTIS.

32 And on to-wit, on the 21st day of July A. D. 1913 the following proceedings were had and entered of record in said Court to-wit:

33 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County, July Term, 1913.

In Chancery.

Gen. No. 302,653. Term No. 4168.

THOMAS CUSACK COMPANY
vs.
CITY OF CHICAGO et al.

This cause coming on to be heard upon the application of the Thomas Cusack Company for a temporary injunction restraining the defendants, as prayed in the sworn bill of complaint filed herein, and it appearing to the Court that due and proper notice of said application has been given to the defendants, and said defendants appearing herein by the corporation counsel of the city of Chicago.

It is ordered that the said application for a temporary injunction be and the same is hereby referred to Chas. J. Trainor, Esq., a Master in Chancery of this Court, to consider said application and to take testimony offered in support thereof, and testimony offered in opposition thereto, and to report the same with his conclusions of law and fact thereon, and his recommendation in the premises.

CHAS. A. McDONALD, *Judge.*

34 And afterwards to -wit, on the 22nd day of July A. D. 1913, the following proceedings were had and entered of record in said Court, to wit:

35 Superior Court of Cook County, July Term, 1913.

Chancery.

No. 302,653.

THOMAS CUSACK COMPANY

vs.

CITY OF CHICAGO et al.

Bill.

On motion of solicitor for complainant, and the defendants being presented by William H. Sexton, Esq., Corporation Counsel of the City of Chicago, and the Court having read the sworn bill of complaint filed herein, and having heard the arguments of counsel and being fully advised in the premises, it is ordered that the defendants, City of Chicago, Carter H. Harrison, Mayor of the City of Chicago, Henry Ericisson, Commissioner of Buildings of the City of Chicago, John McWeeney, Superintendent of Police of the City of Chicago and Charles F. Seyferlich, Fire Marshal and Chief of Brigade of the City of Chicago, and their officers, agents, attorneys and servants, be and they are hereby restrained from taking down, removing, destroying, or in any manner interfering with, or causing to be taken down, removed, destroyed or in any manner interfered with, the bulletin board described in the said bill of complaint and maintained by the complainant upon lots one (1) and two (2) in block two (2) in Peleg Halls Addition to Chicago, in the northwest fractional quarter of Section twenty one (21), Township forty (40) North, Range Fourteen (14) East of the Third Principal Meridian, situated in the City of Chicago, Cook County, Illinois, and from taking down, removing, destroying or in any manner interfering with any other bulletin board or billboard,
36–40 electric sign, or other sign, erected or maintained by the complainant and located upon private property in any block upon any public street in the said City of Chicago in which one half of the buildings on both sides of the streets are used exclusively for residence purposes, upon the authority of Section 707 of the Revised Building Code of the City of Chicago, passed December 5th, 1910, and set forth in said bill, and from any manner enforcing or attempting to enforce all or any of the provisions of said Section 707 against the existing bulletin boards, billboards electric signs or other signs, maintained by the complainant in the City of Chicago until the further order of this Court.

By agreement of the parties, it is further ordered that the hearing of this cause before Charles J. Trainor, the Master in Chancery to whom the application of the complaint for a temporary injunction was referred shall proceed at the earliest possible moment, and

that the said Master shall file his report under said order of reference with all convenient speed.

Enter,

DENNIS J. SULLIVAN, *Judge.*

July 22, 1913.

* * * * * * *

41 And on to-wit, on the 10th day of November, A. D. 1913, a certain Answer was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

In Chancery.

Gen. No. 302,653. Term No. 4168.

THOMAS CUSACK COMPANY
vs.
CITY OF CHICAGO et al.

The Joint and Several Answer of the City of Chicago, Carter H. Harrison, Mayor of the City of Chicago; Henry Ericsson, Commissioner of Buildings of the City of Chicago; John McWeeney, General Superintendent of Police of the City of Chicago, and Charles F. Seyferlich, Fire Marshal and Chief of Brigade of the City of Chicago.

These defendants now and at all times hereafter saving and reserving to themselves and each of them all benefit and advantage of exception or otherwise that can or may be had or taken to the errors, uncertainties and other imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto them, these defendants, severally answering say:

42 First. Answering paragraph 1 of the bill of complaint these defendants neither admit nor deny said allegations but call for strict proof of the same.

Answering paragraph 2 these defendants admit the allegations therein.

Answering paragraph 3 these defendants say they neither admit nor deny the allegations therein, but call for strict proof thereof.

Answering paragraph 4 these defendants neither admit nor deny the allegations therein but call for strict proof thereof.

Answering paragraph 5 of the bill of complaint these defendants admit that many of complainant's bulletin boards, etc., are located on vacant property in certain blocks of which one half or more of

the buildings on both sides of the street are used for residence purposes. As to the other allegations in said paragraph these defendants neither admit nor deny but call for strict proof thereof.

Answering paragraph 6 these defendants deny that all of complainant's boards now situated and maintained on what are known as residence streets in certain blocks in which one half or more of the buildings on both sides of the street are used exclusively for residence purposes are so located by virtue of permits duly issued by the City of Chicago.

These defendants deny that said boards do not endanger the lives and safety of persons passing by or along the same or standing in close proximity thereto.

43 These defendants deny that said boards do, not interfere in any respect with the full use and enjoyment of the public streets, boulevards and parks of the City by the inhabitants of said City or any other person or persons.

These defendants deny that said boards do not interfere with the full and complete use and enjoyment of the private residence and homes located in said blocks by the owners or occupants thereof.

These defendants deny that said bulletin boards comply in all respects with the valid laws of the State of Illinois and the valid ordinances of the City of Chicago and are built and maintained in such manner as not to create a nuisance in fact or in law.

These defendants deny that the complainant have not painted or caused to be painted on said boards any matter injurious to the health or morals of any person in the City of Chicago or elsewhere.

These defendants deny that the boards maintained by the complainant are in full respects safe, sanitary and lawful structures and signs and that they are not injurious to the public health, safety, comfort and welfare.

But these defendants aver that on many occasions assaults, robberies and larcenies have occurred under the shelter of billboards located along the edge of or close to the sidewalks and streets of said city; that in many of these instances the offenders concealed themselves behind the billboards and suddenly stepped out upon their unsuspecting victims; that in many instances such offenders have enticed their victims upon some pretext behind the billboards; that it has frequently happened that billboards so located have been used as a shield to persons engaged in illicit and improper cohabitation, and they have frequently been used as a privy or resort of necessity by persons answering calls of—*

44 Answering paragraph 11 these defendants say that they admit that on or about May 8, 1913, complainants did receive a pretended license or permit in words and figures as set forth in said paragraph 11 and that the complainants did pay to the City of Chicago the sum of $16, as alleged in said permit.

These defendants deny however that said license or permit conferred any authority upon the complainants to erect the billboard therein mentioned for the reason that there was then and there in

* Duplicate copy furnished—pp. 44 and 46.

full force and effect an ordinance of the City of Chicago which ordinance was section 707 of the Chicago Code of 1911 and was in words and figures as follows, to-wit:

"Frontage Consents required: It shall be unlawful for any person, firm or corporation to erect or construct any bill board or sign board in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the peoperty on both sides of the street in the block in which such bill board or sign board is to be erected, constructed or located. Said written consents shall be filed with the Commissioner of Buildings before a permit shall be issued for the erection, construction or location of such bill board or sign board."

These defendants say that the lot described in said permit as No. 614-28 Sheridan Road is in a block in which ½ of the buildings on both sides of the street are used exclusively for residence purposes and that under said ordinances frontage consents were required as set forth in said ordinance.

45 —nature, thereby creating unbearable stench and nuisance for persons passing along the street or sidewalk.

And defendants further aver that by reason of the security from detection furnished by billboards, the space or lot behind the said boards has been used on very many occasions for the deposit and accumulation of refuse, rubbish and filth; and the said boards have sheltered and promoted *and* maintenance and growth of underbrush and weeds.

And your respondents say that the provisions of the ordinances attacked herein tend greatly to limit and do away with the dangers and nuisances complained of as having been heretofore fostered or promoted by bill and sign boards, and your respondents respectfully submit that these ordinances should not, in any or all of their provisions, be wiped, by the decree of this Court, from the laws of the City, and these complainants left to erect numerous sign and billboards, in violation of all provisions of the ordinance throughout the City, unfettered and uncontrolled, except by consideration of their own profit.

Answering paragraph 7 these defendants say that they know nothing thereof but call — strict proof thereof.

Answering paragraph 8 these defendants say that they know nothing thereof but call for strict proof thereof.

Answering paragraph 9 these defendants say that they admit the allegations therein.

Answering paragraph 10 these defendants say that they know nothing of the matters therein stated but call for strict proof thereof.

46 Answering paragraph 11 these defendants say that they admit that on or about May 8, 1913 complainants did receive a pretended license or permit in words and figures as set forth in said paragraph 11 and that the complainants did pay to the City of Chicago the sum of $16, as alleged in said permit.

These defendants deny however that said licenses or permit con-

ferred any authority upon the complainants to erect the billboard therein mentioned for the reason that there was then and there in full force and effect an ordinance of the City of Chicago which ordinance was section 707 of the Chicago Code of 1911 and was in words and figures as follows, to-wit:

"Frontage Consents Required.—It shall be unlawful for any person, firm or corporation to erect or construct any bill board or sign board in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the property on both sides of the street in the block in which such bill board or signboard is to be erected, constructed or located. Said written consents shall be filed with the Commissioner of Buildings before a permit shall be issued for the erection, construction or location of such bill board or sign board."

These defendants say that the lot described in said permit as No. 614-28 Sheridan Road is in Block in which ½ of the buildings on both sides of the street are used exclusively for residence purposes and that under said ordinances frontage consents were required *and* set forth in said ordinance.

47 These defendants say that on or about May 8th, the complainants herein presented to the Building Department pursuant to said ordinance what purported to be the consent of the owners of a majority of the frontage of the property on both sides of the street in the block in which the aforesaid billboards was located.

These defendants say that said pretended consent was in words and figures as follows, to-wit:

"We, the Undersigned Owners, or Authorized Agents, listed below, hereby signify our willing-ness to allow the Thos. Cusack Company the right to erect a signboard on the vacant property known as Lots 1 and 2 in Block 1 in Peleg Hall's addition to Chicago, in the Northwest fractional ¼ of Section 21, Township 40, Range 14. It being understood that in signing this petition, there is to be no liability attached to us on account of same.

Location.	Name.	Frontage.
630–648 Sheridan Rd.	L. R. Williams	239 ft.
638 " "	Henry Schlack	50 ft.
665 " "	K. S. Walsh	50 ft.
656 " "	Mrs. Harriet Pottle	33½ ft.
661 " "	Val Mueller	50 ft.

These defendants say that the complainant at said time represented that the signatures upon said consent constituted the necessary majority required by Section 707 of the Chicago Code of 1911.

48 These defendants further say that a permit to erect said billboard was issued upon the representation above mentioned with the understanding that if said signatures were not sufficient, that said permit would be revoked.

These defendants further say that the Building Department then caused the Map Department of the City of Chicago to ascertain the

number of feet on both sides of the street within the block in which said billboard is located and that said Map Department thereupon advised it that said number is 1340.

And further that upon inspection of the records, it appeared that Mrs. Harriet Pottle and Mr. Val Mueller, did not own and were not agents for the property for which they had pretended to sign.

These defendants further say that before a permit can be lawfully issued to erect the billboard erected by the complainants at 614-28 Sheridan Road, Chicago, that at least 670 feet must be signed up, and that complainant herein, even allowing to it disputed signatures only presented the signatures of 339 feet, and was therefore 331 feet below the amount required by the ordinance, and that for said reason no permit could be lawfully issued. These defendants say that therefore the pretended permit or license was null and void.

Answering paragraph 12 these defendants say that they know nothing of the matter therein alleged but these defendants say that the complainant was not warranted in making the expendi-
49 tures alleged for the reason that the complainant well knew that the frontage consents presented were not sufficient.

Answering paragraph 13 these defendants admit that the notices set up in said paragraph were sent to the complainant.

Answering paragraph 14 these defendants say that they know nothing of the allegations therein but these defendants say that even if said allegations are true they did not deprive the City of Chicago of its right to order said billboard removed.

Answering paragraph 15 these defendants admit that section 707 of the Chicago Code of 1911 is in words and figures as set forth in said paragraph. These defendants say that said ordinance is a valid ordinance.

Answering paragraph 16 these defendants deny each and every allegation of said paragraph but call for strict proof thereof.

Answering paragraphs 17 and 18 these defendants admit the allegations therein.

Answering paragraphs 19 these defendants deny the allegations contained therein but call for strict proof thereof.

Answering paragraph 20 these defendants say that they know nothing of the allegations therein but call for strict proof thereof.

50 Answering paragraphs 21 and 22 these defendants say that they know nothing of the matter therein but that even if said matter is true it does not effect the rights of the parties herein.

Answering paragraphs 23 and 24 these defendants say that they know nothing of the matter therein but call for strict proof thereof.

Answering paragraph 25 these defendants deny the allegations therein made.

Answering paragraphs 26 these defendants admit that some light was furnished by said board but these defendants say that said light is principally in front of said board and that the darkness behind said board in much greater than is said board were not there, because said board cuts off the light that might be reflected from the street. These defendants deny that the said

bulletin board does not in any manner obstruct or interfere with any attractive view of either water or landscape that might be secured or enjoyed if the said bulletin baord were not in existence

These defendants state the fact to be that this bulletin board is upon Sheridan Road, one of the most beautiful boulevards in the world and that said Sheridan Road is built up with beautiful and costly residences and that prior to the erection of this billboard, an unobstructed view of Lake Michigan for approximately two miles could be had across the lot upon which said baord is now erected and that said view was of great value to the community and to the City of Chicago and was a source of great charm and beauty to the many thousands who daily used said Sheridan Rd.

51 These defendants further answering say that signboards in many instances afford means for thieves or others to climb from the tops of said boards into windows of adjoining dwellings and that billboards are likely to communicate fire from vacant lots to buildings or from one building to another.

These defendants further say that the danger from fire and the difficulty in fighting fire is greatly increased by sign and billboards which are attached to the sides or upon the roofs of buildings.

These defendants further say that the dangers from billboards are greatly increased in sections of the city known as residence sections or sections in which more than one-half of the property is used as residence property, for the reason that there are mpre children and old people in said sections, for the reason that there is less travel and fewer people upon the streets, for the reason that there is necessarily less police and fire protection than in business sections, and for the reason that there is less light in residence sections.

These defendants further say that billboards materially decreases the value of all property in residence districts in which such boards are erected and maintained.

Answering paragraph 27 these defendants admit the allegations therein.

Answering paragraphs 28, 29 and 30 these defendants say that they know nothing about the matters therein set forth but that the same if true are not material in this case.

52 Answering paragraph 31 these defendants say that section 707 of the Chicago Code of 1911 is a valid ordinance and furnishes sufficient authority to the City of Chicago to order the complai-ants to remove billboards erected in violation of its provisions.

Answering paragraph 32 these defendants admit the allegations therein set forth.

Answering paragraph 33 these defendants admit that the City of Chicago will continue to attempt to enforce the provisions of section 707 unless restrained by the inju-ction of this Court. These defendants say that said ordinance is a valid ordinance and that if the complainants suffer loss by reason of its enforcement it is a matter which is not material in this suit.

Answering paragraph 34 these defendants say that they know nothing of the matters therein set forth but call for strict proof thereof. These defendants say that even if the matters therein contained are true they are not material in this suit.

Answering paragrap*g* 35 these defendants say that they know nothing of the matters therein but call for strict proof thereof. These defendants say that even if the matters therein contained are true they are not material in this suit.

Answering paragraph 36 these defendants admit that the City of Chicago will continue to enforce section 707 in every manner unless restrained by this Honorable Court.

53 As to any other matters or things in the complainant's said bill of complaint contained, meterial or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, these defendants deny the same on information and belief; all which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct.

These defendants further answering say that there are numerous valid ordinances of the City of Chicago which pertain to the subject of bill and sign boards and that such ordinances are in words and figures as set forth in the pamphlet hereto attached and marked "Defendants' Exhibit One."

These defendants deny that the complainant is entitled to the relief or any part thereof in the said bill of complainant demanded, and pray the same advantage of this answer as if they had pleaded or demurred to said bill of complaint, and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

CITY OF CHICAGO,
CARTER H. HARRISON,
Mayor of Said City of Chicago;
HENRY ERICSSON,
Commissioner of Buoldings of the City of Chicago.
JOHN McWEENEY,
General Supt. of Police of the City of Chicago;
CHARLES F. SEYFERLICH,
Fire Marshal and Chief of Brigade of the City of Chicago,
(Signed) By WM. H. SEXTON,
Corporation Counsel, Their Solicitor.
(Signed) GEO. L. REKER,
Assistant Corporation — of Counsel.

54 And afterwards to-wit, on the 16th day of February A. D. 1913 a certain Replication was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

In Chancery.

THOMAS CUSACK COMPANY, a Corporation,
vs.
CITY OF CHICAGO et al.

The Replication of the Thomas Cusack Company, a Corporation, Complainant, to the Answer of the City of Chicago.

This Repliant, saving and reserving to itself now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendants for replication thereunto, say-, that it will aver, maintain and prove its Bill of Complaint to be true, certain, and sufficient in the law, to be answered unto; and, that the said answer of the said defendant is uncertain, untrue, and -sufficient to be replied unto by this repliant without this; that any other matter or thing whatsoever, in
55 the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain, and prove, as this honorable Court shall direct and humbly prays, as in and by its said Bill it has already prayed.

(Signed) JOHN S. HUMMER,
Solicitor for Complainant.

(Backed:) Gen'l No. 302653. Term No. 4168. In the Superior Court of Cook County. Thomas Cusack Company, a Corporation, vs. The City of Chicago, et al. Replication.
Stamped: Filed Feb. 16, 9-49 A. M. 1914. Richard J. McGrath, Clerk, per —— ——. John S. Hummer, Attorney, 69 West Washington Street, Chicago.

56 And afterwards to-wit, on the 25th day of March A. D. 1914 the following proceedings were had and entered of record in said Court to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

Superior Court of Cook County.

In Chancery.

No. 4168.

THOMAS CUSACK COMPANY
vs.
CITY OF CHICAGO et al.

On motion of solicitor for complainant leave is hereby given to complainant to file amendments to its bill of complaint instanter, to which order said defendant objects and excepts. And upon motion of solicitor for defendants it is ordered that the answer of the defendants filed to the original bill herein, shall stand as an answer to the said bill as amended, and that the replication to the original answer of the defendants shall stand as a replication to the answer to the said bill as amended.

CHARLES M. FOELL, *Judge.*

57 And on to-wit, on the 25th day of March A. D. 1914 a certain Amendment to Bill was filed in the office of the Clerk of said Court in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

In Chancery.

Gen. No. 302,653. Term No. 4168.

THOMAS CUSACK COMPANY
vs.
CITY OF CHICAGO et al.

Amendment to Bill of Complaint Herein.

Filed by leave of court first had and obtained.

1. Strike out the whole of paragraph numbered 6 on pages four and five of said bill of Complaint, and insert in lieu thereof the following:

"6. That your orator has not painted or caused or permitted to be painted or placed or maintained upon any of its bulletin boards, wall signs or electric signs located within the City of Chicago or elsewhere, any advertisement or other matter injurious to the health or morals of any person in the City of Chicago or elsewhere."

2. On page twenty-four between paragraphs numbered 31 and 32 insert the following:

"31½. That since the passage of said ordinance of December 5th, 1910, your orator has erected, and it is now maintaining, certain other bulletin boards on private property located in certain blocks on public streets in which one-half of the buildings on both sides of the street are used for residence purposes, and that each and all of the said last mentioned bulletin boards were so erected
58 by virtue of permits duly issued by the City of Chicago to your orator, but without the frontage consents required by section 707 and were erected and constrtucted in a safe, substancial and workmanlike manner and are in all respects safe, sanitary and lawful structures, and are not injurious to the public health, safety, comfort and welfare, and do not endanger the lives and safety of persons passing by or along the same, or standing in close proximity thereto, and do not interfere in any respect with the full use and enjoyment of the public streets and boulevards in the City of Chicago by the inhabitants of said City, or any other person, nor with the full and complete use and employment of the private residences and homes located within such blocks, by the owners or occupants thereof. That said last mentioned bulletin boards comply in all respects with the valid laws of the State of Illinois and the valid ordinances of the City of Chicago, and are built and maintained in such manner as not to create a nuisance in fact or in law."

(Signed) THOMAS CUSACK COMPANY,
By JOHN S. HUMMER,
Its Solicitor.

(Signed) JOHN S. HUMMER,
Of Counsel.

59 And afterwards to-wit, on the 3rd day of July A. D. 1914 the following proceedings were had and entered of record in said Court, to-wit.

Gen. No. 302,653. Term No. 4168.

THOMAS CUSACK COMPANY
vs.
CITY OF CHICAGO, CARTER H. HARRISON, Mayor of the City of Chicago; Henry Ericsson, Commissioner of Buildings of the City of Chicago; John McWeeney, General Superintendent of Police of the City of Chicago, and Charles F. Seyferlich, Fire Marshal and Chief of Brigade of the City of Chicago.

Decree.

Now comes the complainant, the Thomas Cusack Company, a corporation, by John S. Hummer, Esq., its solicitor, and the defendants City of Chicago; Carter H. Harrison, Mayor of the City of Chicago, and Henry Ericsson, Commissioner of Buildings of the City of Chicago, by Messrs. William H. Sexton, Corporation Counsel,

and Loring R. Hoover, Assistant Corporation Counsel, their solicitors; and this cause coming on to be heard upon the bill of complaint herein as amended, and upon the joint and several answer of the said defendants, and upon the complainant's replication to said answer, and upon the testimony and evidence taken and heard in open Court, and the Court having heard the arguments of counsel and being fully advised in the premises,—the Court finds as follows:

1. That this Court has jurisdiction of the parties in this cause and -f the subject matter thereof.

60 2. That the Complainant, Thomas Cusack Company, is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and is duly licensed by the State of Illinois to do business therein as a foreign corporation, and has since been so incorporated and duly licensed continuously since the month of September A. D. 1903.

3. That the Complainant is engaged in the business of outdoor advertising by means of painted signs on bulletin boards and wall spaces, and by means of metal and electric signs, such bulletin boards and electric signs being located upon the ground, and upon the roofs and buildings and attached to the walls of buildings, and that the said complainant has been ever since its incorporation, and now is, carrying on its said business in the City of Chicago and elsewhere in the State of Illinois and *on* other states.

4. That the City of Chicago is a municipal corporation organized under and by virtue of the laws of the State of Illinois. That Carter H. Harrison is the Mayor of said City, Henry Ericsson is Comiissioner of Buildings of said City, John McWeeney was at the time of the filing of the bill of complaint herein the Superintendent of Polire of said City and Charles F. Seyferlich was at the time of the filing of said bill the Fire Marshal and Chief of Brigade of said City.

5. That in order to carry on *an account* its business and to render service commensurate with the commercial needs and eemands of its patrons, it has been, and is necessary for the complainant to acquire, and the complaiannt has acquired, and now holds the right, license and permission by lease or otherwise, to use parcels

61 of fround, vacant lots, walls, buildings, and other spaces in and about the City of Chicago and elsewhere for the erection, painting and maintenance of bulletin boards, wall signs, and electric signs thereon, to advertise the wares, commodities and undertakings of its said customers. That the complainant has expended large sums of money in procuring leases from the several owners or agents controlling the said lots or parcels of grouns and buildings upon which said bulletin boards, wall signs and electric signs are located, which said leases run for periods varying from several months to fifteen years respectively, and the complainant is paying as rental under said leases large sums of money annually. That in some of said leases Thomas Cusack Company is given the *prelilige* of terminating the same in the event that the City of Chicago should

pass any ordinance restricting the size or location of signs or bill boards or requiring any license fee thereon.

6. That in and about conduction its said business the complainant has acquired, and now is the owner of a large number of bulletin boards, wall signs, and electric signs, in the City of Chicago, on which the complainant has been and is maintaining advertisements for its customers for hire, from which it is deriving a large amount of money and profits per annum.

7. That all of the complainants painted and electric signs and bulletin boards are placed and maintained on private property, and none of the same are placed or maintained on public property.

8. That many of the complainants said bulletin boards and electric signs are located and maintained on vacant property in the City of Chicago in certain blocks in which one half of the buildings on both sides of the street are used exclusively for residence
62 purposes, and that the said bulletin boards and electric signs so located constitute an essential and most valuable part of the complainant's advertising plant.

9. That the property or space located on what are known as residence streets, particularly on boulevards and other streets used exclusively by pedestrains, automobiles and other pleasure vehicles in large numbers, furnish and provide very attractive, advantageous and valuable locations for outdoor advertising, and for that reason the complainant's customers demand that their advertisements be placed and maintained as far as possible, on private property so located, and that the complainant is compelled to comply with said demands or lose the patronage of such customers.

10. That the complainant has invested in its said business a large amount of capital, and has built up and is maintaining a large and extensive advertising plant, and furnishes employment for several hundred skilled workmen, artists, solicitors, salesman and other employees. That the business carried on by the said complainant is a lawful one, and does not in any manner conflict with any valid law of the United States or the State of Illinois, or with any valid ordinance of the City of Chicago.

11. That the said complainant is a tax payer, paying taxes upon its property located in the City of Chicago and elsewhere in the State of Illinois.

12. That there is now, and has been since December 5th, 1910, in force in the City of Chicago, an ordinance relating to and
63 governing the erection and maintenance of bulletin boards billboards and signs of the kind and character erected and maintained by the complainant in said City, which said ordinance is in the following words and figures (except that Section 706 thereof was amended and changed into its present form subsequent to December 5th 1910.

"Article XXIII."

Billboards, Signboards, Signs, and Fences.

"695. Billboards and Signboards on Buildings—Construction Height.—No billboard or signboards shall be erected or placed upon

or above the roof of any building or structure within the limits of the City of Chicago and it shall be unlawful for any person, firm or corporation to attach any billboard or sign board to the front, sides or rear walls of any building, unless the same shall be placed flat against the surface of the building and safety and securing anchored or fastened thereto in a manner satisfactory to the Commissioner of Buildings.

696. Size and Construction of Billboards and Sign Boards Erected within Fire Limits Otherwise Than on Buildings.—The face of billboards or signboards erected within the fire limits as now defined or as they may hereafter be defined by ordinance of the City of Chicago, other than signboards and billboards referred to in Section .698 hereof, shall not exceed twelve feet in height, and the same shall be constructed of galvanized iron or some other equally incumbustible material, except that the stringers, uprights
64 and braces thereof may be of wood. All such billboards or signboards shall be securely anchored or fastened so as to be safe and substancial.

697. Height and Distance from the Ground of Billboards and Signboards Erected within the Fire Limits.—It shall be unlawful for any person, firm or corporation to construct or erect any billboard or signboard, except those specified in Section 698 hereof, within the fire limits of the City of Chicago at a greater height than fifteen feet six inches above the level of the adjoining street. Where the grades of the adjoining street or streets has not been established, no billboard or signboard shall be constructed or erected at a greater height than fifteen feet six inches above the level of the ground upon which such billboard or sign-board is erected. The face of every billboard or signboard within the fire limits shall be of incombustible material, but the supports and framework of the same shall be wood. The base of the billboards or signboards shall, in all cases be at least three feet six inches above the level of the adjoining street. If, however, the level of the ground where the billboards or signboard is to be erected is above the level of the street, then the bottom of the face of the billboards or signboard must be at least three feet six inches above the level of the ground at the point where the board is to be erected. Every said billboard or signboard must be constructed and located in accordance with the
65 provis-ons of this Article and shall be subject to the approval of the Commissioner of Buildings.

698. Wooden Billboards or Signboards—Construction—Size—Exceptions.—Billboards or signboards not exceeding twelve square feet in area may be built of wood or other combustible material, and such billboards or signboards shall be exempt from the provisions of this article, except that they shall be safely and securely anchored or fastened and shall be so constructed, anchored and fastened that they will withstand the wind pressure specified in Section 703 of this Article. It shall be unlawful to erect any such billboards or signboards exceeding twelve square feet in area before a permit therefor has been procured from the Commissioner of Buildings the application for which must include the plans and specifications of

such board and its supports and fastenings. No such board shall be more than twelve feet high.

699. Billboards and Signboards Erected Outside the Fire Limits—Construction—Size.—It shall be unlawful for any person, firm or corporation to construct, erect or locate any billboard or signboard, except those specified in Section 698 hereof outside the fire limits of Chicago at a greater height than fifteen feet six inches above the level of the adjoining street. Where the grade of the adjoining street has not been established, no billboard or signboard shall be constructed or erected, at a greater height than fifteen feet six inches above the level of the ground upon which such billboard or signboard is erected.

The base of the billboards or signboard shall, be at least three feet six inches above the level of the adjoining street. If, however, the level of the ground where the billboard is to be erected is above the level of the street, then the bottom of the face of the billboard or signboard must be at least three feet six inches above the level of the ground at the point where the board is to be erected. The braces, supports and face of the billboards or signboards outside the fire limits may be of wood, unless the billboard or signboard shall be erected or located so that any part of the face of said board is nearer than ten feet to any building or structure in which case the face of the same shall be constructed with incombustible material, every such billboard or signboard shall be safely and securely constructed anchored fastened and located in accordance with the provisions of this article and shall be subject to the approval of the Commissioner of Buildings.

700. Provisions of This Article Shall Apply to Other Similar Structures.—The provisions of this Article shall apply to other similar structures of like size and construction without regard to their use whether erected on or near the surface of the ground or anchored to, or fastened to any billboard building or structure.

701. No Billboard or Signboard Shall be Erected Without Permit.—No billboard or signboard or other similar structure such as is described in this Article shall be erected or maintained within the city unless a permit shall first have been secured by the person, firm or corporation desiring to erect or maintain such billboards or signboard from the Commissioner of Buildings to whom application for such permit shall be made, and such application shall be accompanied by such plans and specifications of the proposed bill board or signboard and location of same as are necessary to fully advise and acquaint and said Commissioner with the construction of such proposed billboard or signboard. If the plans and specifications accompanying such application shall be in accordance with the provisions of this Article, said Commissioner shall thereupon issue a permit for the erection of such billboard or signboard upon the payment by the applicant of a fee as hereinafter fixed.

702. Alternation and Repair of Billboards and Signboards.—No material alteration of any billboard or signboard nor removal from one location to another shall be made except upon a written permit

issued by the Commissioner of Buildings authorizing such alteration or removal, and such permit shall be issued upon application in writing made to such Commissioner by the owner of such billboard or signboard or by the person in charge, possession or control thereof, accompanied by a plan of the proposed alterations or repairs to be made and a written statement covering the proposed removal from one location to another and its reconstruction in the new location, which said alteration and repairs or removal shall be made in accordance with the provisions of this Article and
68 the ordinance of the City of Chicago. Where such plans, specifications and location are in compliance with the requirements of this article and are satisfactory to and approved by the Commissioner of Buildings, such Commissioner shall issue a permit upon the payment of a fee therefor as hereinafter fixed; but such alteration shall not be construed to apply to the changing of any advertising matter of any billboard or signboard, nor the refacing of the framework supporting same.

703. Wind Pressure—Strength—Billboards—Now existing or hereafter constructed.—All billboards and signboards now in existence, or hereafter to be constructed, erected or maintained, shall be made, constructed, erected and maintained of sufficient strength to withstand a wind pressure of twenty five pounds per square foot of surface without stressing the material beyond the safe limit of stress elsewhere in this chapter.

704. Change in Existing Billboards and Signboards.—No surface billboard or signboard constructed or erected prior to the passage of this ordinance shall be maintained after six months from and after the passage of this ordinance where the height of such billboard or signboard exceeds seventeen feet, nor shall such billboards or signboards be maintained after such date, unless there is a clear space of at least three feet six inches above the level of the adjoining street. If, however, the level of the ground where
69 the billboard or signboard is erected or maintained is above the level of the street then there must be a clear space of at least three feet between the bottom or face of the billboard or signboard and the level of the ground at the point where the billboard or signboard is erected or maintained.

705. Duty of Commissioner—Owner's Name to be Placed on Top of Billboard or Signboard—Annual Inspection.—It shall be the duty of the Commissioner of Buildings to inspect all plans and specifications submitted in connection with the erection or construction or the alteration or repair of any billboard or signboard and to approve same if the method of construction and provisions made for fastening, securing, anchoring and maintaining such billboards or signboards are such as will serve to protect the public and to render such billboards safe and substantial. It is further made the duty of the Commissioner of Buildings to exercise supervision over all billboards and signboards erected or being maintained under the provisions of this Article; and to cause inspection by inspectors in his department of all such billboards and signboards and to be made once each year and oftener where the condition of such boards so

require and whenever it shall appear to said commissioner that any such billboard or signboard has been erected in violation of this ordinance or is in an unsafe condition or has become unstable or insecure or is in such a condition as to be a menace to the safety or health of the public, he shall thereupon issue or cause to be issued a notice in writing to the owner of such billboard or signboard or person in charge, possession or control thereof, if the where-
70 abouts of such person is known, informing such person, firm or corporation of the violation of this ordinance and the dangerous condition of such billboard or signboard and directing him to make such alterations or repairs thereto, or to do such acts or things, as are necessary or advisable to place such billboard or signboard in a safe, substantial and secure condition and to make the same comply with the requirements of this ordinance within such reasonable time as may be stated in said notice. If the owner or person in charge, possession or control of any billboard or signboard when so notified shall refuse, fail, or neglect to comply with and conform to the requirements of such notice, said Commissioner shall, upon the expiration of the time therein mentioned, alter, change, tear down or cause to be torn down such part of such billboard or signboard as is constructed and maintained in violation of this ordinance, and shall charge the expense to the owner or person in possession, charge or control of such billboard or signboard which shall be recovered from them by appropriate legal proceedings. If the owner of such billboard or signboard or the person in charge, possession or control thereof cannot be found, or his whereabouts cannot be ascertained, the Commissioner shall attach or cause to be attached to said billboard or signboard, a notice of the same import as that required to be sent to the owner or person in charge, possession or control thereof, where the owner is known, and if such billboard or signboard shall not have been made
71 to conform to this ordinance and be placed in a secure, safe and substantial condition, in accordance with the requirements of such notice, within thirty days after such notice shall have been attached to such billboard or signboard, it shall be the duty of the Commissioner of Buildings to thereupon cause such billboard or signboard or such portion thereof as is constructed and maintained in violation of this ordinance to be torn down; provided that nothing herein contained shall prevent the Commissioner of Buildings from adopting such precautionary measures as may be necessary or advisable in case of imminent danger in order to place such billboards or signboards in a safe condition, the expense of which shall be charged to and recovered from the owner of such billboard or signboard or person in charge, possession or control thereof in any appropriate proceedings therefor. No permit shall be issued to any applicant for permission to erect a billboard or signboard unless such applicant shall agree to place and maintain on the top of such billboard or signboard the name of the person or corporation owning the same *ro* who is in charge, possession or control thereof. It shall be the duty of the Commiccioner of Buildings to require that the same of the person or corporation owning or in possession,

charge or control of such billboard or signboard is placed upon such billboard or signboard forthwith upon the erection thereof, and is kept thereon at all times such billboard or signboard of the person in charge, possession or control thereof shall fail or refuse to place and maintain such name on the same, they shall be subject to the penalty hereinafter provided for. Every person, firm or corporation engaged in the business of erecting billboards
72 for the purpose of display advertising shall file with the Commissioner of Buildings within ninety days after the passage of this ordinance a full and complete report of the location and size of all existing billboards or signboards.

706. Fees for Permits and Annual Inspection—Indemnifying Bond.—(*a*) The fee to be charged for permits issued for the erection or construction of billboards or signboards or for the alteration thereof shall be two ($2.00) dollars for each twenty five lineal feet of billboard or signboard erected or altered. An annual fee shall be charged every person, firm or corporation as owner, or in possession, charge or control of any billboard or signboard for inspection of such billboards or signboards, which shall be thirty five (35) cents for each twenty five lineal feet of billboard or signboard, or fractional part thereof.

(*b*) Every person, firm or corporation engaged in the business of constructing and erecting billboaords or signboards shall file with the City Clerk a penal bond, with sureties to be approved by the Commissioner of Buildings, in the sum of twenty-five thousand ($25,000.00) dollars, conditional that such person, firm or corporation shall faithfully comply with all the provisions and requirements of this ordinance with respect to the construction, alteration, location and safety of billboards or signboards and for the payment of the inspection fee required by said ordinance, and conditional, further to indemnify, save and keep harmless said City of Chicago
73 and its officials from any and all claims, damages, liabilities, losses, actions, suits or judgments which may be presented, sustained, brought or secured against the City of Chicago or any of its officials on account of the construction, maintenance, alteration or removal of any of said billboards or signboards or by reason of any accidents caused by or resulting therefrom.

707. Frontage Consents Required.—It shall be unlawful for any person, firm or corporation to erect or construct any billboard or signboard in any block on any public street in which one half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the property on both sides of the street in the block in which such billboard or signboard is to be erected, constructed or located. Such written consents shall be filed with the Commissioner of Buildings before a permit shall be issued for the erection, construction or location of such billboard or signboard.

708. Penalty.—Any person, firm or corporation owning operationg maintaining or in charge, possession or control of any billboard or signboard within the city, who shall neglect or refuse to

comply with the provisions of this Article, or who erects, constructs or maintains any billboard or signboard that does not comply with the provisions of this Article shall be fined not less than twenty five ($25.00) dollars nor more than two hundred ($200.00) dollars for each offense: and each day on which any such person shall
74 permit or allow any billboard or signboard owned, operated, maintained or controlled by him to be erected, constructed or maintained in violation of any of the provisions of the Article shall constitute a separate and distinct offense.

13. That the validity of Section 707 of said ordinance, relating to frontage consents, is the question involved in this cause, and that the validity of the other provisions of said ordinance is not involved herein and is not herein passed upon or adjudicated by this Court.

14. That on or about August 14th, 1912, the complainant entered into a written lease with one L. R. Williams who was then and there owner of *a* certain vacant lots or parcels of land, known as Lots one (1) and two (2) in Peleg Hall's Addition to Chicago in the Northwest fractional quarter of Section twenty-one (21) Township forty (40) North, Range fourteeen (14) East of the Third Principal Meridian, in Cook County, Illinois, also known as the 235 feet, more or less, of vacant property next East and adjoining the premises No. 628 Sheridan Road, in the City of Chicago, in and by which lease the said L. R. Williams granted, demised and leased to the complainant the sole and exclusive right to erect and maintain bulletin boards and sign boards upon said Lots one (1) and two (2) for a period of one year and the complainant agreed to pay to the said lessor for the use of said lots for the purpose aforesaid the sum of $600.00 per annum, and said lease was in full force and effect at the time of the filing of the bill of complaint herein.

15. That on or about the 8th day of May A. D. 1913, the complainant, being desirous of erecting and maintaining a bul-
75 letin board on said Lots one (1) and two (2), applied to the Commissioner of Buildings of the City of Chicago for a permit to erect and maintain the said bulletin board at the location aforesaid, and thereupon a license or permit was issued by the said Commissioner of Buildings bearing date the 8th day of May 1913, authorizing the complainant to erect and maintain a bill board or bulletin board on the premises aforesaid, subject to the condition that the complainant, in the erection of said bulletin board, should conform in all respects to the ordinances of the City of Chicago regulating the construction of buildings in the City limits, and subject further to be revoked at any time upon the violation of any of the provisions of said ordinance, and the complainant paid to the City Collector of said City for said permit the sum of $16.00 said sum being the proper amount to be paid for such permit under the provisions of said ordinance.

16. That subsequent to the issuing of said permit the complainant purchased and caused to be prepared the necessary material for, and caused to be erected, the said bulletin board at the location and upon the property aforesaid, and caused to be painted on said bulletin board, when completed, four advertising display signs, and that

the complainant has ever since kept and maintained the said bulletin board with display signs painted thereon at the location and upon the premises aforesaid. That the complainant incurred and paid large sums of money in purchasing and causing to *ne* prepared the material necessary for the construction of said bulletin board and in and about the erection and construction thereof.

76 16*a*. That after said bulletin board has been erected and the advertisements has been painted thereon as aforesaid, the City of Chicago notified the complainant to comply with said Section 707 and procure and file frontage consents for the erection and maintenance of said bulletin board, as required by said Section 707, or take down and remove the said bulletin board.

17. That the complainant failed to procure and file such frontage consents as demanded by said City, and thereupon on the 17th day of July A. D. 1913, the defendant City of Chicago through the defendant Henry Ericsson, Commissioner of Buildings notified and directed the complainant to remove the said bulletin board from the premises aforesaid within forty-eight hours after the said 17th day of July A. D. 1913, and further notified the complainant that in the event of its failure to so remove the said bulletin board the said City of Chicago would cause the same to be taken down and removed by the fire department of said City.

18. That prior to the time that the complainant received the said notice of July 17th, 1913 the said bulletin board had been fully and completely erected and constructed, and the said four advertisements had been completely painted thereon, and the said bulletin boards and signs were at the said time in a finished condition, and maintained by the complainant as a part of its advertising plant in the said City of Chicago.

19. That the land and premises upon which the said bulletin board was so erected, and upon which the same is maintained by the complainant, to-wit: Lots one (1) and two (2) in Block two (2)

77 in Peleg Hall's Addition to Chicago aforesaid, face a public street known as Sheridan Road in said City of Chicago, and are located in a block in which one half of the buildings on both sides of the street are used exclusively for residence purposes, and that the said complainant did not, at a — prior to the time that it procured a permit for the erection of said bulletin board and caused the same to be erected or at any other time, obtain the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the property on both sides of the street in the block in which said bulletin board was erected and is now being maintained, and filed written consents with the Commissioner of Buildings, which were subsequently found to be insuffucuent under said Section 707.

20. That the only ground upon which the City of Chicago based its claim to a right or authority to require the complainant to remove the said bulletin board or, in the event that the complainant failed or refused to so remove the same, then to cause the said bulletin board to be removed by the Fire Department, or some other agency of the said City, and upon which the City based its demand

upon the complainant to procure such frontage consents and take down and remove said bulletin board, and its threat to cause the said bulletin board to be taken down and removed by the said Fire Department, and its refusal to permit the complainant to maintain the said bulletin board upon the premises aforesaid, was and is the provisions of said Section 707 of the said ordinance, relating
78 to frontage consents.

21. That the said Complainant refused to take down or remove the said bulletin board as demanded by the City of Chicago, or to procure frontage consents for the erection and maintenance thereof as demanded by said City, and thereupon the City of Chicago prepared to carry out its said threat to take down and remove, or cause to be taken down or removed the said bulletin board, and the said City so intended to take down and remove the said bulletin board at the time that the bill of complaint herein was filed, solely on account of the failure of the complainant to procure and file frontage consents as provided by said Section 707.

22. That at the time of the filing of the bill of complaint herein it was the purpose and intention of the City of Chicago to enforce in all respects the provisions of said Section 707, not only with reference to the said bulletin board so erected on said Lots one (1) and two, (2), but also with reference to any and all other bulletin boards or signs erected by the complainant at any time since the passage of asid ordinance upon property located in any block on any public street in the City of Chicago in which one half of the buildings on both sides of the street were used exclusively for residence purposes, and to cause to be taken down and removed the said bulletin board on said Lots one (1) and two (2) and any and all other bulletin boards or signs so erected since the passage of said ordinance on property so located, unless the complainant should procure and file with the Commissioner of Buildings frontage consents as required by said Section 707.

79 23. That the said City of Chicago at the time of the filing of the bill of complaint herein refused, and intended to continue refusing, solely on the ground of the provisions of said Section 707, to grant to the complainant permission to erect other bulletin boards or signs on property located in any block on any public street in said city in which one-half of the buildings on both sides of the street were used for residence purposes unless the complainant should obtain and file frontage consents as provided in said Section.

24. That since the passage of said ordinance the complainant has, without complying with the provisions of said Section 707, erected, and it is now maintaining, in addition to the bulletin board so erected on said Lots one (1) and Two (2) certain other bulletin boards and signs on property located in certain blocks on public streets in the City of Chicago in which one half of the buildings on both sides of the street are used exclusively for residence purposes, said other bulletin boards or signs being erected and maintained at the following locations:

Northeast corner of Grand Boulevard and 40th Street.

4909 Michigan Boulevard;
2909 Michigan Boulevard;
Southeast corner of Diversey Boulevard and Southport Avenue (also known as Number 1405 Diversey Boulevard);
816 to 834 South Ashland Avenue;
237 South Racine Avenue (formerly Center Avenue);
Southwest corner of Garfield Boulevard and Justine Street;
80 2450 Jackson Boulevard;
Southwest corner of Marshall Boulevard and Francisco Street;
Northeast corner of Washington Boulevard and 43rd Avenue;
Southeast corner of Washington Boulevard and 48th Avenue;
40 to 52 North Laramie Avenue (formerly 52nd Avenue).

25. That the lands and premises upon which such other bulletin boards or signs have been erected since the passage of said ordinance as aforesaid are in the possession of the complainant under and by virtue of leases from the owners thereof, granting to the complainant, the right to occupy and use the said premises for the purposes of erecting and maintaining thereon bulletin boards and signs for a stated rental paid by the complainant to such owners, which said leases run variously from several months to fifteen years.

26. That all of the said other bulletin boards or signs so erected by the complainant since the passage of said ordinances were erected under and by virtue of permits issued by the Commissioner of Buildings of the City of Chicago.

27. That at the time of the filing of the bill of complaint herein the complainant was maintaining upon all of the said bulletin boards or signs erected by it since the passage of said ordinance, advertisements for certain of its customers under and pursuant to contracts made with such customers, whereby the complainant undertook and agrred to place and maintain upon said bulletin boards or signs advertisements for the said customers for various long periods of time for a valuable considetation to be paid therefor by the said customers to the complainant.

81 28. That the space for advertising on said Lots one (1) and two (2) is of special value to the complainant and its customers on account of its prominent and commanding position, being adjacent to one of the most heavily traveled streets in the City of Chicago, where the said signs were and are seen by many thousands of people, both residents of the City of Chicago and its suburbs and by strangers visiting the City, and where they will bring the wares or articles of manufacture of said customers to the notice of the public in an especially effective manner.

That the complainant was and is unable to find elsewhere in the said City another location of equal prominence and importance, or equally satisfactory to its customers whose signs are displayed on said bulletin board.

29. That the said bulletin board so erected and maintained by the complainant upon said lots one (1) and two (2), and that the said other bulletin boards or signs so erected by the complainant since the passage of said ordinance of December 5th, 1910, upon property

located in certain blocks on public streets in the City of Chicago in which one half of the buildings on both sides of such streets were and are used exclusively for residence purposes, are built in a safe, strong substantial and workmanlike manner, and are in all respects safe and substantial structures, and in compliance with the terms and provisions of said ordinance of December 5th, 1910, excepting Section 707 thereof, and the said bulletin boards or signs have been and are kept and maintained in good repair and in a clean, wholesome and sanitary condition. That the said bulletin boards
82 and signs themselves, and the advertisements maintained thereon, are not injurious to the public health, safety, comfort, and welfare, and do not menace or endanger in any manner the safety, health, or comfort of persons living near the same, or of persons passing by or standing in close proximity to said boards and signs, and do not interfere with the full and complete use and enjoyment of the public streets, boulevards and parks in the City of Chicago, by the inhabitants of said City or by any other person or persons, and the same are in *full* respects in compliance with all valid laws of the State of Illinois and all valid ordinances of the City of Chicago.

30. That the erection and maintenance of the said bulletin boards or signs themselves so erected since the passage of said ordinance do not interfere with the lawful and rightful use and enjoyment of private homes or residences whether located within the respective blocks and on the respective streets where the said bulletin boards or signs are located and maintained, or elsewhere in the vicinity of said boards or signs. That some of the said bulletin boards or signs are illuminated at night and furnish a certain amount of light for the locality in which they are maintained.

31. That while it is shown by the evidence that in certain instances persons have gone behind bulletin boards and there answered calls of nature, and that in some instances rubbish was deposited on lots on which bulletin boards or signs were located and maintained, it is also known by the evidence that such improper active uses were made in all instances by trespassers and that the same did not occur perceptibly more frequently on lots on which such bulletin boards or signs were maintained than in yards
83 or on vacant lots or on property improved with structures other than bulletin boards or signs, that the deposits of rubbish on lots was not due to, or caused or induced by the presence of a bulletin board or sign on such lots, and that the vacant lots on which no bulletin boards or signs were located were in no better condition, as to containing rubbish, than the lots on which bulletin boards and signs were located and maintained.

32. That the said bulletin boards and signs themselves as erected and maintained are not in any respect nuisances and do not create, induce or invite the commission or maintenance of nuisances.

33. That the space in front of the bulletin boards and signs are uniformly kept in a clean and attractive condition by the owners thereof.

34. That if the provisions of said Section 707 were enforced the complainant would suffer serious and irreparable loss and damage,

which cannot be estimated or determined in an action at law. That if the complainant were compelled to resort to the courts of law for relief from the enforcement of said Section 707, it would be involved in numerous and expensive law suits with the City of Chicago, and the complainant's employees and workmen engaged in the work of erecting, painting and installing its bulletin boards or signs would be subjected to repeated arrests and prosecutions, and the complainant would be unnecessarily harassed and its business constantly and seriously interfered with.

84 35. That said Section 707, and each and every provision thereof, is unconstitutional and void, and that the same did not furnish any valid excuse or justification for the demand of the City of Chicago upon the complainant to obtain and file frontage consents, as provided in said Section, or to take down or remove the said bulletin board erected on said Lots one (1) and two (2), or any valid excuse or justification for the threatened removal by the City of Chicago of the said bulletin board in the event that the complainant failed to obtain and file such frontage consents, and did not furnish any valid excuse or justification for the threatened action of the City of Chicago of requiring the complainant to obtain and file frontage consents for the erection or maintenance of the said other bulletin boards or signs erected by the complainant subsequent to the passage of said ordinance, or of removing such other bulletin boards or signs in the event that the complainant failed to procure and file such frontage consents; and did not and does not furnish any valid excuse or justification for the refusal of the City of Chicago to issue permits to the complainant for the erection and maintenance of bulletin boards or signs upon property located in any block on any public street in the City of Chicago in which one half or more of the buildings on both sides of the street are used exclusively for residence purposes.

36. That the material allegations of the bill of complaint herein as amended are supported by the proofs, and that the complainant is entitled to a permanent injunction restraining the defendant from enforcing the provisions of said Section 707, or any of them

85 It is therefore hereby ordered, adjudged and decreed that said Section 707 of the said ordinance of the City of Chicago passes December 5th, 1910, and each and all of the provisions thereof, is and are unconstitutional, null and void and of no force and effect.

It is further ordered, adjudged and decreed that the said defendants, and each of them, their officers, agents, attorneys, servants, and each of them, be and they are hereby perpetually enjoined from in any manner enforcing, or attempting to enforce, said Section 707, or any of the provisions thereof and from taking down, removing, destroying or in any manner interfering with, or causing to be taken down, removed, destroyed, or in any manner interfered with—under the authority of said Section 707, the said bulletin board located and maintained by the complainant upon said Lots one (1) and two (2) in Block two (2) in Peleg Hall's Addition to Chicago in the Northwest fractional quarter of Section twenty one (21) Township forty (40) North Range fourteen (14)

East of the Third Principal Meridian, situated in the City of Chicago, County of Cook and State of Illinois, and from taking down, removing, destroying or in any manner interfering with, or causing to be taken down, removed, destroyed or in any manner interfered with, under the authority of said Section 707, all or any of said other bulletin boards or signs erected or maintained by the complainant in the City of Chicago upon any property located in any block upon any public street in said City of Chicago in which one half or more of the buildings on both sides of the street are used exclusively for residence purposes and from in any manner hindering, molesting, prosecuting or interfering with the complainant, or its employees, under the authority of said Section 707, in the
86 erection or maintenance of bulletin boards, electric signs or other signs upon property located in any block upon any public street in the City of Chicago in which one half or more of the buildings on both sides of the street are used exclusively for residence purposes, and from requiring the complainant to procure and file with the Commissioner of Buildings frontage consents as provided in and by Section 707, and from refusing, under the authority of said Section 707 to issue permits to the complainant for the erection or maintenance of bulletin boards, electric signs, or other signs upon property located in any block upon any public street in the City of Chicago in which one half of the buildings on both sides of the street are used exclusively for residence purposes.

Enter.

CHARLES M. FOELL, *Judge.*

87–867 And on to-wit, *on* the 3rd day of July, A. D. 1914, the following proceedings were had and entered of record in said Court to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 302,653. Term No. 4168.

THOMAS CUSACK COMPANY
vs.
CITY OF CHICAGO, CARTER H. HARRISON, Mayor of the City of Chicago; Henry Ericsson, Commissioner of Buildings of the City of Chicago; John McWeeney, General Superintendent of Police of Chicago, and Charles F. Seyferlich, Fire Marshal and Chief of Brigade of the City of Chicago.

Order.

On motion of Solicitor of defendants for an appeal to the Supreme Court of Illinois from the final order and decree entered in the above entitled cause on July 3rd, 1914, it is ordered that the same

be granted and said appeal is hereby allowed; and it is further ordered that leave be and leave is hereby given to the defendants to file their certificate of evidence in the above entitled cause within sixty (60) days from the date of the entry of this order.

[SEAL.] CHARLES M. FOELL, *Judge.*

* * * * * * *

868 STATE OF ILLINOIS,
County of Cook, ss:

I, Richard J. McGrath, Clerk of the Superior Court of Cook County, in and for the State of Illinois, and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete transcript of the record as per præcipe on file herein, except the certificate of evidence the original which is by stipulation of the parties incorporated herein and made a part hereof in a certain cause lately pending in said Court on the Chancery side thereof, wherein Thomas Cusack Company was complainant and City of Chicago et al. were defendant.

In Witness whereof I have hereunto set my hand, and affixed the seal of said Court, at Chicago, this 11th day of September, A. D. 1914.

[SEAL.] RICHARD J. McGRATH, *Clerk.*

869 In the Supreme Court of Illinois, October Term, A. D. 1914.

THOMAS CUSACK COMPANY, (a Corporation), Appellee
vs.
CITY OF CHICAGO (a Municipal Corporation), CARTER H. HARRISON, Mayor of the City of Chicago; Henry Ericsson, Commissioner of Buildings of the City of Chicago, Appellants.

Appeal from the Superior Court of Cook County.

Hon. Chas. M. Foell, Trial Judge.

Assignment of Errors.

And now comes the said City of Chicago, Carter H. Harrison, Mayor of the City of Chicago and Henry Ericsson, Commissioner of Buildings of the City of Chicago, Appellants, by William H. Sexton, their attorney, and say that in the record and proceedings, and in rendering the decree aforesaid, there is manifest error, in this, to-wit:

1. The court below admitted improper evidence on the part of the complainant.
2. The court below rejected proper evidence on the part of the defendants.
3. The decree of said court is contrary to the evidence.
4. The decree of said court is contrary to the law.

5. The court below erred in rendering a decree in favor of the complainant and against the defendants.

6. The court below erred in holding that the ordinance of the City of Chicago, known as section 707 of the Chicago code of 1911, was invalid.

7. The court below erred in not decreeing that section 707 of The Chicago Code of 1911 was a valid exercise by the City of Chicago of its police power and that said ordinance was and is binding upon the complainant and that it was and is the legal duty of the complainant either to comply with said ordinance or to forbear to erect and maintain bulletin boards or signboards in residence
870 blocks.

8. The court below erred in not decreeing that section 707 of The Chicago Code of 1911 was a valid exercise by the City of Chicago of the power given it by the State Legislature by an act entitled, "An Act granting power to the city council in cities, and the president of the board of trustees in villages and incorporated towns to license and regulate advertising by means of billboards, signboards and signs." Approved June 14, 1909, and in force July 1, 1909.

By reason whereof, the appellants pray that said judgment may be reversed, etc.

WM. H. SEXTON,
Corporation Counsel, Solicitor for Appellants.

871 And afterwards, to-wit, on the Sixteenth day of October, A. D. 1914, the same being one of the days of the said October term of Court certain proceedings were had in said Court and entered of record in the words and figures following, to-wit:

9820.

THOMAS CUSACK COMPANY, Appellee,
vs.
CITY OF CHICAGO, a Municipal Corporation et al., Appellants.

Appeal Superior Court Cook.

Now on this day came the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that City of Chicago a municipal corporation et al., appellants, hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee, Thomas Cusack Company, having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by Loring R. Hoover for

appellants and John S. Hummer for appellee is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

872 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court, Begun and Held at Springfield, on Tuesday, the First day of December, in the Year of Our Lord One Thousand Nine Hundred and Fourteen, within and for the State of Illinois.

Present:

The Honorable James H. Cartwright, Chief Justice.
Honorable William M. Farmer, Justice.
Honorable Orrin N. Carter, Justice.
Honorable George A. Cooke, Justice.
Honorable Alonzo K. Vickers, Justice.
Honorable Frank K. Dunn, Justice.
Honorable Charles C. Craig, Justice.
Patrick J. Lucy, Attorney General.
Warren C. Murray, Marshal.

Attest:

CHARLES W. VAIL, *Clerk.*

Be it Remembered, that afterward, to-wit: on the 16th day of December, 1914, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 9820.

Error to —.

THE THOMAS CUSACK COMPANY, Appellee,
v.
CITY OF CHICAGO et al., Appellees.

Appeal from Superior Court, Cook.

873 Docket No. 9820—Agenda 133—October, 1914.

THE THOMAS CUSACK COMPANY, Appellee,
v.
CITY OF CHICAGO et al., Appellants.

Mr. JUSTICE VICKERS delivered the opinion of the court:

The Thomas Cusack Company, a corporation, filed a bill in equity in the superior court of Cook county against the city of Chicago,

the mayor of the city, and other officials, to restrain the enforcement of an ordinance regulating the erection and maintenance of bill-boards in residence blocks in said city. The bill alleges that the complainant is engaged in the business of outdoor advertising in Chicago and elsewhere, and that it maintains bill-boards on private property in residence blocks without having complied with an ordinance of the city of Chicago passed and in force December 5, 1910. The section of the ordinance the validity of which is involved is as follows:

"707. Frontage consents required.—It shall be unlawful for any person, firm or corporation to erect or construct any bill-board or sign-board in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes, without first obtaining the consent, in writing, of the owners or duly authorized agents of said owners owning a majority of the frontage of the property, on both sides of the street, in the block in which such bill-board or sign-board is to be erected, constructed or located. Such written consents shall be filed with the commissioner of buildings before a permit shall be issued for the erection, construction or location of such bill-board or sign-board."

The bill alleges that a large number of bill-boards have been erected since the passage of said ordinance without complying with its provisions in regard to obtaining the consent of the majority of the property owners fronting on both sides of the street in the blocks in which such bill-boards have been erected and maintained; that the occupation of lots with these bill-boards is under leases made with the owners of the lots, and that the complainant has made contracts with its customers for the maintenance of said boards and the display of advertisements thereon. The bill alleges that the section of the ordinance above set out is invalid for the reason that it is discriminatory and unconstitutional, in that it deprives property owners of their property without due process of law, in vio-
874 lation of the constitutions of the United States and of the State of Illinois. The bill also alleges that the bill-boards erected in violation of said ordinance do not in any way interfere with the public health, safety, welfare or comfort, and alleges that the city of Chicago has no power to pass said ordiance, and that if said city has power to pass any ordinance on the subject of bill-boards, the one in question is void for unreasonableness. The prayer is for a perpetual injunction against the city and its officials enjoining them from the enforcement of said ordinance.

The defendants below answered the bill, in which the alleged invalidity is denied. The answer alleges that the ordinance was regularly passed by the city council pursuant to expressed legislative authority, and that it is a proper exercise of the police power of the city of Chicago and the State of Illinois. The answer sets up that bill-boards are dangerous to the public health, safety, morals, welfare and comfort in that they afford protection to disorderly persons, who conceal themselves behind them; that the space behind bill-boards is used in such manner as to create nuisances by reason of the shelter and protection afforded by said bill-boards; that the

maintenance of such bill-boards causes the accumulation of inflammable material, thereby increasing the danger of fires. The answer denies that the ordinance is invalid for any reason, and particularly that it is not invalid because discriminatory, oppressive or unreasonable.

The cause was heard upon evidence produced in open court, and a decree was entered in accordance with the prayer of the bill, perpetually enjoining the enforcement of the ordinance. The defendants below have prosecuted an appeal to this court.

The sole question involved for our consideration is the validity of section 707 of the municipal code of Chicago, which is quoted above. The contentions in support of the decree are, first, that the municipality had no power to pass the ordinance in question; and second, conceding that the city has the power to pass proper regulatory ordinances in regard to the erection and maintenance of bill-boards, the ordinance here involved is void because it is not a proper exercise of such power, in that it is oppressive and unreasonable.

This court held in City of Chicago v. Gunning System, 214 Ill. 628, that under paragraph 66 of section 1 of article 5 of the Cities and Villages act, relating to the police power, and under paragraph 75 of said section, relating to nuisances, a city has
875 power to enact and enforce reasonable regulations respecting bill-boards within the corporate limits, whether upon public streets or private property. On page 639 this court summed up its view upon this question, as follows: "We think it clear that either under paragraph 66 or 75, supra, full power and authority are conferred upon cities, towns and villages to regulate the construction and use of bill-boards within their corporate limits, provided the regulation is not unreasonable. Moreover, paragraph 78 of section 1, article 5, confers upon cities and villages the right 'to do all acts, make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.' No argument need be advanced that the structure described in the bill before us may become a menace to the safety of the public, and hence the subject of control and regulation. They may be erected in such a manner as to be dangerous to the public by falling or being blown down, or constructed of such materials and dimensions as to be dangerous, or placed upon buildings or other structures in such a manner as to endanger the life and limb of the citizen, or erected within the fire limits in such proximity to buildings as to increase the danger of loss by fire, or so as to obstruct the view of railroad crossings and thus endanger life by accident, or have printed or displayed upon them obscene characters tending to demoralize and injure the public morals. If boards are erected in violation of any of these public rights or interests, and of others which might be mentioned, there is ample power within the statute to regulate them, provided such regulations are reasonably necessary for the protection of the public health, morals or safety. Nor will the mere fact that such structures are placed upon private

property, and not on the public streets, protect those owning or using them against such reasonable regulations."

While the particular ordinance that was involved in the Gunning System case was held invalid, the decision did not rest on the want of power in the municipality to pass reasonable ordinances upon that subject. To remove any doubt as to the existence of the power, the legislature in 1912 passed an act providing "that the city council in cities and the president and board of trustees in villages and incorporated towns shall have the power to license street advertising by means of bill-boards, sign-boards and signs, and to regulate the character and control the location of such bill-boards, sign-boards and signs upon vacant property and
876 upon buildings." (Hurd's Stat. 1913, chap. 24, par. 696.)

Whether this statute enlarges the powers which existed, as declared by this court in the Gunning System case, or not, it is not necessary to inquire. It is at least a clear legislative declaration which unmistakably manifest an intention that the subject of bill-boards and bill-board advertising shall be subject to municipal regulation.

The existence of the power to legislate upon the subject of bill-boards being established, the next inquiry is whether the ordinance in question is a reasonable exercise of such power. Upon the question of the reasonableness of the ordinance much evidence was introduced by the appellants showing the detrimental results that have followed the erection and maintenance of bill-boards in the residence districts. It was shown by the testimony that fires had been started from the accumulation of combustible material that had lodged against the base of bill-boards. As bearing upon this question and as affording a justification for requiring frontage consents in residence districts, evidence was offered to show that the residence territory of the city is not so well protected with the fire extinguishing apparatus as is the business district. This evidence was objected to and the court sustained the objection. In this the court erred. When the reasonableness of an ordinance is under investigation as a question of fact, any pertinent matter which may reasonably be supposed to have influenced the enactment of the ordinance would seem to be proper evidence. If, as a matter of fact, the erection of bill-boards would increase the hazards of fire in residence districts, that fact, together with any other attending circumstance which would show that fires in residential districts would be more disastrous to life and property and that their extinguishment would be attended with greater difficulties than in other districts, would have a direct bearing upon the reasonableness of the requirement for frontage consent. Welch v. Swasey, 214 U. S. 91.

Appellants also offered to show that bill-boards offered a protection to disorderly and law-breaking persons and that residence districts are not afforded as full police protection as other districts in the city of Chicago, and the court refused to hear this evidence, and in this the court also erred. It did, however, appear from the testimony that women and children are on the streets, unaccom-

panied, in larger numbers and more frequently in residence districts than in other places, and that the crimes against wo-
877 men and children the most frequent are indecent exposure and offenses against the person. It is shown by the testimony that the two elements contributing to crime in cities are, in the order of their importance, first, absence of police; and second, darkness. It was shown by appellee that in some instances lights were maintained upon the front surface of its bill-boards, but in answer to this it was shown that the space behind the boards remained dark, and that the rear was even darker than it would have been if there were no lights at all. It was shown that nuisances were permitted to exist in the rear of surface bill-boards, and physicians testified that deposits found behind bill-boards breed disease germs, which may be carried and scattered in the dust by the wind and by flies and other insects. It was shown that dissolute and immoral practices were carried on under the cover and shield furnished by these bill-boards. The answer made to all this, is, that any other structure or building which would afford a like screen from view would produce similar results, and herein is found the basis for the contention that the ordinance is discriminatory; but we are of the opinion that the surface bill-board is unlike, in several particulars, structures that are erected for other purposes, such as fences, barns and other out-buildings that may be used in connection with a residence. This argument was made in the case of Gunning Advertising Co. v. City of St. Louis, 239 Mo. 99, and we quote the answer of that court to this argument, as follows: "While that is possible yet it is not probable. Nor does the erection and maintenance of a building or a fence along the lines of private property bordering upon public streets have the natural tendency to create any such nuisances as those mentioned. Buildings and fences are erected for the purpose of enclosing grounds and excluding therefrom strangers and trespassers, and common experience teaches us that they are effectual for that purpose, which is inconsistent with the idea that they promote and harbor nuisance, as bill-boards do, which rarely, if ever, enclose the grounds upon which they stand. That is not the purpose of their erection. Generally they are built along only one end or side of a lot or plot of ground, but occasionally upon two sides, and in rare instances upon three, but I have never seen or heard of a lot being enclosed upon all four sides by bill-boards. The end of the lot fronting upon an alley is almost invariably left open, for the simple reason that the alley is not conspicious in the public eye, and
878 for that reason it would be useless to display advertisements at such places where they could not be seen."

Under the state of facts shown by the evidence here, we cannot agree with the court below that the ordinance in question is void for unreasonableness. Before the court will be justified in declaring the ordinance invalid the unreasonableness should be made to clearly appear. It should be manifest that the discretion reposed in municipal authorities has been abused in the exercise of the power conferred. (Chicago and Alton Railroad Co. v. City

of Carlinville, 200 Ill. 314, and cases there cited.) The case of City of Chicago v. Gunning System, supra, is clearly distinguishable from the case at bar. The ordinance there held unreasonable and void was general in its terms and prescribed restrictive conditions in regard to the erection and maintenance of bill-boards, and made no exception whether the bill-boards were in a thickly settled part of the city or in an open block or field. Mr. Justice Wilkin said on this point in the Gunning System case: "It must be apparent to all reasonable minds that provisions which are necessary in one of such cases would be wholly unnecessary and unreasonable in others, and that a provision might be a reasonable police regulation in the one case and in one locality which would be wholly unreasonable under other circumstances in another locality. This ordinance is, however, without qualification or limitation applicable to signs and bill-boards alike in all portions of the great city of Chicago, applicable alike to every portion of its extended territory. We do not hold that this ordinance is so unreasonable as to be void if it were limited to particular districts of the city." In Haller Sign Works v. Training School, 249 Ill. 436, we held an ordinance which prohibited the erection of any character of signs for advertising purposes within five hundred feet of any public park or boulevard, illegal and void, for the reason that it did not tend to promote the safety, health, comfort or general welfare of the public but was manifestly passed solely from æsthetic considerations. The ordinance here under consideration is not open to the objections that were apparent upon the face of the ordinance in the Haller Sign Works case, and the evidence in the record clearly distinguishes this case from the Gunning System case.

The ordinance is not unreasonable or oppressive because it requires the consent of a majority of the owners of property, within certain limits, on both sides of the street where such bill-
879 boards are to be erected. In respect to occupations or structures the location and maintenance of which are subject to regulation under the police power of the municipality, a requirement of frontage consents of property owners, within reasonable limits, is a proper mode of exercising the power of regulation vested in the municipality. Ordinances of this general character have been upheld in regard to livery stables in City of Chicago v. Stratton, 162 Ill. 494, in regard to dram-shops in Swift v. People, 162 id. 534, and in respect to garages in the late case of People v. Ericsson, 263 id. 368.

It follows from the views herein expressed that the court erred in entering a final decree perpetually enjoining the enforcement of section 707 of the municipal code of Chicago.

The decree of the superior court is reversed and the cause remanded to that court, with directions to dismiss the bill for want of equity.

Reversed and remanded, with directions.

880 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court, Begun and Held at Springfield on Tuesday, the First Day of December, in the Year of Our Lord One Thousand Nine Hundred and Fourteen, within and for the State of Illinois.

Present:

The Honorable James H. Cartwright, Chief Justice.
Honorable William M. Farmer, Justice.
Honorable Orrin N. Carter, Justice.
Honorable George A. Cooke, Justice.
Honorable Alonzo K. Vickers, Justice.
Honorable Frank K. Dunn, Justice.
Honorable Charles C. Craig, Justice.
Patrick J. Lucey, Attorney General.
Warren C. Murray, Marshal.

Attest:
CHARLES W. VAIL, *Clerk.*

Be it remembered, that to-wit: on the 16th day of December, A. D. 1914, the same being one of the days of the said December term of said Supreme Court, certain procedings were had in said Court and entered of record in the words and figures following, to-wit:

December 16th, A. D. 1914.

No. 9820.

THOMAS CUSACK COMPANY, Appellee,
vs.
CITY OF CHICAGO, a Municipal Corporation; CARTER H. HARRISON, Mayor of the City of Chicago; Henry Ericson, Commissioner of Buildings of City of Chicago, Appellants.

Appeal from Superior Court of Cook County.

Error to —.

And now on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and now being sufficiently advised of and concerning the premises are of opinion that in the record and proceedings aforesaid, and in the rendition of the decree aforesaid, there is Manifest Error: Therefore, it is considered by the Court that, for that Error, and others in the record and proceedings aforesaid, the decree of the Superior Court of Cook County in this behalf rendered, be reversed, annulled, set aside, and wholly for

nothing esteemed, and this cause be remanded to the Superior Court of Cook County with directions to dismiss the bill for want of equity.

And it is further considered by the Court that the said Appellants recover of and from the said Appellee their costs by them in this behalf expended, to be taxed, and that they have execution therefor.

881 Be it remembered that to-wit, on the Ninth day of January, 1915, a certain Petition for Rehearing was filed in the office of the Clerk of the Supreme Court in words and figures following, to-wit:

882 In the Supreme Court of Illinois, December Term, A. D. 1914.

No. 9820.

THOMAS CUSACK COMPANY, Appellee,
vs.
CITY OF CHICAGO et al., Appellants.

Appeal from Superior Court, Cook County.

Petition for Rehearing.

John S. Hummer, Attorney for Appellee.

Filed Jan. 9, 1915. Chas. W. Vail, Clerk of Supreme Court.

In the Supreme Court of Illinois, December Term, A. D. 1914.

THOMAS CUSACK COMPANY, Appellee,
vs.
CITY OF CHICAGO et al., Appellants.

Appeal from Superior Court, Cook County.

Petition for Rehearing.

May it please the Court:

The court's attention is called to the fact that this cause came on for oral argument upon the last day of the October term, and so nearly at the hour of adjournment that but 15 minutes could be allowed each side for argument.

For this reason we respectfully pray the indulgence of the court if we discuss the points we think the court overlooked, at greater length than would have been necessary if counsel had been able to present the contentions of appellee more fully in oral argument, as he had expected to do.

This case involves constitutional questions of such importance,

and is fraught with such serious consequences to appellee as well as others engaged in the same business throughout the state, that a full and exhaustive presentation and consideration of the law and facts is essential.

1. The court has overlooked the one controlling question in the case, and its opinion is entirely devoted to the discussion of two questions not involved.

First. The right of the city to regulate billboards.

That right was conceded and in fact has never been questioned since the decision in the Gunning case.

Second. Whether Section 707 of the ordinance in question is a reasonable billboard regulation.

This section of the ordinance is not at all a billboard regulation. Under such guise it is an attempt to limit the use of property to an extent not necessary to protect the public safety and welfare, to prevent a property owner from erecting upon his property a safe, secure structure which complies with every regulation which the city deemed necessary to protect the public safety, health or welfare.

This is the first case in which the Supreme Court of Illinois has denied protection to the owner of private property in making a lawful use thereof, where such use does not offend against the public health, safety, comfort, morals or welfare.

It is a radical and dangerous departure from the principles long established and adhered to by this court.

Heretofore this court has firmly stood in defense of the right of a property owner to make a lawful use of his property and against any attempted encroachment against that right, not necessary to protect the public safety, health, comfort or welfare.

Is this court prepared to turn its back upon the safe and sound principles heretofore so firmly maintained, and follow the call of æstheticism to the point where the right of an owner of property to the lawful use of the same is to be subjected to and limited by the whims and caprices of his neighbors?

No court in this country has yet upheld the right of any municipality to require frontage consents for the erection of billboards.

The question has been passed upon in California, Colorado, Missouri, and other states, as well as Illinois, and the courts in those states have unanimously held such provisions for frontage consents to be unreasonable restrictions upon the lawful use of property.

Curran v. Denver, 47 Colo. 221.
Gunning v. St. Louis, 239 Mo. 99,

usually citing the decision of this court in the case of Chicago v. Gunning System, 214 Ill. 628, which established a precedent that has been approved and followed by the courts of other states. The Supreme Court of Missouri, in the same opinion from which this court has quoted certain findings (Gunning Advertising Co. v. St. Louis, 239 Mo. 99), in referring to the question of frontage consents, and approving the decision of this court in the *Gunning* case, says:

"In the case of Chicago v. Gunning System, 214 Ill. 618, the Supreme Court of Illinois held the ordinance there under consideration void because it absolutely prohibited the erection of all billboards along any boulevard or pleasure drive or along any street

where three-fourths of the buildings are residences, without the consent, in writing, of at least three-fourths of the residents and property owners on both sides of the street in the block where the board is to be erected. That decision was sound both upon principle and authority. The prohibition did not depend upon the question of public safety, but solely upon the pleasure of three-fourths of the property owners residing along the street.

2. The court appears to have overlooked the fact that so far as the frontage consent section of the ordinance is concerned (the validity of which section only is questioned), the question of public health, morals, safety or welfare has nothing to do with the question whether billboards shall or shall not be permitted. Wholly regardless of those considerations whether they are to be permitted or prohibited in residence districts depends solely on the consent of a certain percentage of property owners, and their consent may be given or withheld through any whim or caprice, and the matter of public safety is in no manner whatever involved.

3. The court in its opinion says:

"Much evidence was introduced by the appellants showing the detrimental results that have followed the erection and maintenance of billboards in residence districts."

We submit that the court has misapprehended the purport of the evidence on this point, and that the evidence does not show that detrimental results followed or were caused by the erection of the billboards, but merely that appellants' evidence tended to show the existence of certain conditions complained of on lots on which billboards were located. Whether such conditions existed prior to the erection of the boards was not shown; but the evidence did show conclusively that all of the conditions complained of commonly existed on vacant lots regardless of whether or not billboards were constructed on such lots and even in greater degree on lots where there were no billboards. (See finding of court, Abst., 54-55.)

4. The court has overlooked the fact that practically all of the testimony introduced by appellants concerned surface billboards, erected at a time when there were no regulations or restrictions concerning their construction.

Under the provisions of the ordinance of 1910 (other than Section 707) no surface billboards such as the court appears to have in mind, can be erected, as the ordinance provides that the bottom of the boards must be at least three and one-half feet above the surface of the ground. This, with other provisions, were intended to and do prevent the commission of the alleged nuisances referred to by the court, as the boards so constructed do not furnish a shield to disorderly persons or to the perpetrators of such alleged nuisances.

5. The court says further:

"As bearing upon this question and as affording a justification for requiring frontage consents in residence districts, evidence was offered to show that the residence territory of the city is not so well protected with fire extinguishing apparatus as is the business district. This evidence was objected to and the court sustained the objection. In this the court erred. * * * If, as a matter of fact, the erection of billboards would increase the hazards of fire in residence districts, that fact, together with any other attending circum-

stances which would show that fires in residential districts would be more disastrous to life and property and that their extinguishment would be attended with greater difficulties, than in other districts, would have a direct bearing upon the reasonableness of the requirement for frontage consents." (Citing Welch v. Swazy, 214 U. S. 91).

We call the court's attention to the fact that other sections of the ordinance require billboards to be constructed of non-combustible materials (Abst., 37), thus removing any danger of their causing or spreading fires. If there were in fact such danger it would be a danger to the entire community, not merely to the front part of the block in which a board might be located, and to justify the prohibition of billboards as a measure of public safety and at the same time say that if a majority of the frontage owners in any block give their consent, that what is said to be a dangerous condition which may menace the entire community may be established, is clearly inconsistent and unreasonable.

The evidence in this record does not show that bill-boards in any single instance ever caused a fire, or caused a fire to spread, or prevented or interfered with the extinguishment of a fire. The building of the boards three and a half feet from the ground removes any danger of their hindering or interfering with the fire department.

The court also appears to have overlooked the fact that the ordinance permits the construction of billboards in other than residence districts without frontage consents, and the danger from fires is certainly not less in factory districts, lumber yards and business districts generally, than in residence districts, and the danger of loss of life and property from fires in such districts is far greater than in residence localities.

It is obvious that danger from fires was not one of the reasons for requiring frontage consents in residence districts and not requiring such consents in other places.

We ask the court to re-examine the case of Welch v. Swazey, 114 U. S. 91, above cited.

The question of frontage consents was in no manner involved in that case.

The court had under consideration an act of the Legislature of Massachusetts dividing the City of Boston into two zones, within which different limitations were fixed for the height of buildings. It was conceded by the opponents of the act that the limit of 125 feet in one zone was proper as a measure for public safety, and the court held that the limit of between 80 and 100 feet in the other zone therefore became a question only of discretion, with the exercise of which by the Legislature the court declined to interfere. But if the act had established a certain limit in either zone as a measure of public safety, which might be disregarded by any property owner in such zone if he could obtain the consents of a certain number of other property owners, and enforced against those who could not obtain such consents, we submit that an entirely different question would have been presented, and a different decision reached.

That is a situation in the case at bar which the court appears to have overlooked. That is,—a measure which is sought to be justified as a protection to the general public may be nullified by

the owners of a majority of the frontage in any block, but must be obeyed by the owners of the minority of the frontage, unless they also can obtain the consent of the majority. In other words, the majority of the owners in any block can construct billboards if they see fit, and are practically given power to control the use of their property by the minority owners in this respect, and notwithstanding the measure is for the protection of the public in general, the interests of the public may be entirely disregarded.

6. The court says:

"It was shown that nuisances were permitted to exist in the rear of surface billboards, and physicians testified that deposits found behind billboards breed disease germs, which may be carried and scattered in the dust by wind and by flies and other insects."

The court misapprehended the evidence on this point. There was no evidence whatever that nuisances were permitted, certainly not by the owners of the billboards, and if the nuisances referred to could be said to be permitted, the permission was by the city, through its failure to make any effort to prevent or prohibit.

The evidence did show, as the chancellor found, that the owners of the billboards kept men at work continually cleaning the grounds about their billboards, and that the alleged nuisances existed to a much greater extent on vacant lots where there were no billboards, and where the evidence showed that no attempt was made to keep such lots clean and free of rubbish, etc.

7. The court says:

"It was shown that dissolute and immoral practices were carried on under the cover and shield furnished by these billboards."

If the court refers to billboards in residence districts, the court clearly is mistaken, as the only instance of practices of this kind shown by the evidence occurred in a yard used for storage of old lumber, wagons, etc., and not near the billboard, which was upon the lot line; and from the character of the use made of this property it does not appear to have been a residence block, and was not such a billboard as could have been erected under the ordinance now in force. (It did not belong to appellee.) (Abst., 121.)

8. The court says:

"It was shown by the testimony that fires had been started from the accumulation of combustible material that had lodged against the base of billboards."

We submit that the court is in error as to the facts in this regard, as the evidence showed only two instances of fires, both of which occurred on the same lot on the front of which was a billboard, and this lot was in a business district. One fire occurred in the middle of the lot (evidently some person burning rubbish), the other under the sidewalk. The billboard did not burn and the testimony did not show any connection between the billboard and the fires. This also was an old billboard such as could not be erected under the regulations of the ordinance now in force.

There is no evidence of any such fire in a residence district and no evidence that a billboard ever caused any fire. (See testimony of appellant's witness Murphy, cross-examination, Abst., 154.) With the records of its fire department in its possession, the failure

of the city to show that any fire had ever been caused or spread by a billboard is the strongest evidence that fires were not so caused or spread.

The court will bear in mind also that the billboards, to which this section 707 applies, must be fire proof and must be built three and one-half feet above the ground.

How can combustible material lodge against the base of such billboards when that base is three and one-half feet above the ground? The court must have had in mind billboards having their bases directly upon the ground, and not those erected in compliance with the provision of this ordinance.

9. The court appears to have overlooked the comprehensive character of section 707 in question, which is not limited in its application to billboards erected upon the ground, to which the opinion of the court seems to apply only, but is directed as well to signboards of any knid or discription, even though fastened to the walls of buildings in such manner that they could not possibly have the remotest connection with any of the alleged evils complained of, or have any tendency whatever to affect in any manner the public health, safety, comfort or welfare.

10. The court says:

"but we are of the opinion that the surface billboard is unlike, in several particulars, structures that are erected for other purposes, such as fences, barns and other outbuildings that may be used in connection with a residence."

The respect in which such structures as fences, barns and outbuildings are unlike billboards erected under this ordinance (so far as the question here is involved) is, that such structures are built on the ground and do furnish a complete shield to the perpetrators of nuisances, and as the evidence shows conclusively, nuisances of the kind complained of were more frequently committed behind such structures than behind billboards, and as heretofore shown billboards constructed under the provisions of this ordinance do not and can not furnish such shields.

The court seems to have overlooked the fact that under the provision of this ordinance such surface billboards as the court evidently has in mind, that is boards having their base upon the surface of the ground are absolutely prohibited. No such boards can be erected. They must be at least 3½ feet above the surface; and the court also seems to have overlooked the fact that while such structures as fences, barns, etc., are held not properly subject to such restrictions as billboards, that under this ordinance a fence, or other similar structure would become amenable to the prohibition, if a sign was painted upon it making of it a signboard as well as a fence.

So far as the natural and ordinary use of such structures are concerned is the use of a sign advertising for sale the property on which it stands any less lawful or harmless than the use of a fence, barn or outbuilding? Yet this court overlooks the fact that — ordinance prohibits the owner of a lot in a residence district from erecting thereon a sign (larger than 12 square feet) advertising his property for sale without first obtaining the consent of his neighbors.

A more flagrant violation of a property owner's constitutional right to use his property, under guise of regulation, is hard to imagine.

Appellee's business consists in large part of building such "for sale" signs for property owners and agents and its business in that respect — seriously injured by this ordinance.

10. The court says:

"It is shown by the testimony that the two elements contributing to crime in cities are, in the order of their importance, first, absence of police; and second, darkness. It was shown by appellee that in some instances lights were maintained upon the front surface of the billboards, but in answer to this it was shown that the rear was even darker than it would have been if there were no lights at all.

We submit that the court has overlooked the fact that the most reasonable remedy for the absence of lights in the rear of billboards is to require such lights if necessary, and that the proper remedy for lack of sufficient police would be to increase the police force, and that crimes due to lack of light or sufficient police protection, can not reasonably be attributed to the existence of billboards.

Furthermore if crime is due to, or increased by the existence of billboards, certainly it would be unreasonable to permit it, by consent of the owners of a majority of the property in any block or district.

11. The court appears to have overlooked the fact that practically all of the testimony introduced by appellants concerning conditions on lots where there were billboards, concerned billboards erected before the ordinance now in force was passed, and at a time when there were no regulations, or restrictions; but the provisions of the ordinance now in force, other than Section 707, so regulates the construction of billboards that the evils enumerated by the court, and which are held to justify the enactment, are effectually prohibited. The ordinance requires all billboards to be constructed of noncombustible materials, which eliminates the danger of fires; requires them to be at least three and one-half feet above the ground, which prevents them from being available as a place of concealment or protection by disordrely persons, and from interfering with the police and fire department in the exercise of their duties; requires them to be constructed to withstand any wind pressure likely to occur; prohibits anything of an immoral nature to be painted or posted upon them; limits their height; and makes numerous other regulations and restrictions that effectively prevent billboards from being the cause of the evil conditions that the court says justify the requirement for frontage consents. (See ordinance, Abst., 37.)

Section 707 deals not with boards erected before its passage and not in accordance with the strict and drastic requirements of the other provisions of the ordinance of 1910, but with boards to be erected after its passage and built in conformity with all the requirements of said ordinance, whereby they are made and maintained safe, secure and sanitary, and do not in any respect offend against the public safety or welfare,—in other words the prohibition relates to new, safe, wholesome structures built and maintained

in accordance with the city's requirements enacted to protect the public safety, health and welfare, and entirely adequate for that purpose. They are not open to the objections and criticisms contained in the court's opinions. The court's objections relate to boards of a kind and character no longer built in Chicago and not permitted to be built under the provisions of the ordinance of 1910 now in force and not herein questioned.

In this connection we ask the court to re-examine the decision in the case of Gunning Advertising Company v. City of St. Louis, 239 Mo. 99, from which the court quotes at length, and which it appears to strongly approve. The court will see that the question considered in that case was the validity of provisions of an ordinance regulating the manner of construction, material, height above ground, and other similar regulative provisions, and the conclusion of the court was that such regulations were reasonable in view of conditions in St. Louis. Those regulations and others in addition are all contained in the ordinance here in question, and their reasonableness is not now questioned.

But the court in the St. Louis case when it discussed the question of frontage consents emphatically approved the decision of this court in the Gunning case, holding such requirement for frontage consents to be an unreasonable restriction upon the right of an owner to the use of his property.

It would be unfair to the appellee to require the billboards that it has erected under the present ordinance upon which Section 707 operates, with the billboards that were maintained in St. Louis at the time that the case of St. Louis Gunning Advertising Co. v. St. Louis arose, and to treat them as in the same class. The Missouri Supreme Court evidently considered that the conditions in St. Louis which it described in the objection would be remedied by the enforcement of the ordinance then under inquiry; and so they would, and were. That ordinance was substantially similar to the ordinance now in force in Chicago, of which Section 707 is a part. While the decision of the Missouri court was in all respects the most sweeping and drastic anti-billboard decision ever handed down, yet that same court indicated that it would not sustain an ordinance requiring frontage consents, basing its holding in that regard on the decision of this court in the Gunning case.

12. We respectfully submit that the court has overlooked the distinction made in the Gunning decision between the grounds on which the several sections of the ordinance there under consideration were held invalid.

We ask the court to re-examine that decision and note that the sections of the ordinance regulating the manner of construction, area, character of material, location with reference to lot line, height, location with reference to each other, etc., were held invalid because these sections were general and applied to billboards erected in any part of the city. It was held that such regulations might be reasonable if applied to a certain part of the city, say, within the fire limits, and might be unreasonable if applied to localities outside the fire limits in outlying and sparsely settled districts.

The statement by the court in the Gunning case that "We do not hold that this ordinance is so unreasonable as to be void if it were limited to particular districts of the city," which is quoted by the court in the case at bar, referred only to the provisions relating to construction, character of material, height from ground, etc., and had no reference whatever to the provision requiring frontage consents. That provision was considered separately and was declared invalid, not on the ground that it was too general as the other provisions were, but on the ground that it was "an arbitrary restriction on the part of the City, depriving an individual property owner of the use of his property as he may choose, without any showing that such use would be injurious to others in the same vicinity" * * * that its purpose seemed to be mainly sentimental and to prevent sights which may be offensive to the æsthetic sensibilities of certain individuals residing in or passing through the vicinity of the billboards."

The section relating to frontage consents was not open to the objection that it was too general and applied to all parts of the city alike. It applied only to residence districts, just as the present ordinance does.

In that case there was some evidence, that rubbish accumulated on lots occupied by billboards.

For convenience of reference and comparison we quote the sections of the two ordinances.

Ordinance held invalid in Gunning case.

"Sec. 4. No such sign or billboard shall be erected upon or along any boulevard or pleasure driveway, or in any streets where three quarters (¾) of the buildings in such street are devoted to residence purposes only, unless the person or persons desiring to erect such sign or billboard shall first have secured the consent, in writing of three-quarters (¾) of the residence and property owners on both sides of the street in the block where it is desired to erect such sign or billboard."

Ordinance in case at bar:

Sec. 707. Frontage Consents Required.—It shall be unlawful for any person, firm or corporation to erect or construct any billboard or signboard in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners ow-ing a majority of the frontage of the property on both sides of the street in the block in which such billboard or sign board is to be erected, constructed or located. Such written consents shall be filed with the commissioner of buildings before a permit shall be issued for the erection, construction or location of such bill board or sign board.

We have conceded that the city has under its police power the right to regulate the construction and maintenance of billboards so far as such regulation is reasonable and necessary to protect the public health, safety and welfare. We contend that the act providing

"That the city council in cities and the president and board of trustees in villages and incorporated towns, shall have the power to license street advertising by means of billboards, signboards and signs, and to regulate the character and control the location of such billboards, signboards and signs upon vacant property and upon buildings,"

approved June 14, 1909 (Hurd's Stat. 1913, Chap. 24, Par. 696), added nothing to the power *of* the city already had, as declared by this court in the Gunning case. The city had as much power to pass the frontage consent ordinance that was held void in the Gunning case as it had to adopt Section 707 in question here.

There is no substantial difference in the two ordinances and no difference in the principles affecting their validity, and the present ordinance in question cannot be sustained without in effect overruling the decision in the Gunning case, which has stood the test of time and has been repeatedly cited with approval and followed by the courts of this and other states.

The provisions of Section 707 constitute a prohibition against the erection or maintenance of billboards on certain residence streets, subject to waiver of such prohibition by the neighbors.

In order to sustain the right of waiver, the power to prohibit must exist in the city. That neither the city nor even the state has the power to prohibit the erection and maintenance of billboards in the residence districts, has been decided by this court in the case of Haller Sign Works v. Physical Culture Training School, 249 Ill. 436.

In that case a statute prohibiting the erection or maintenance of billboards within 500 feet of a public park or boulevard was held unconstitutional. The area comprised within 500 feet of the various parks and boulevards of Chicago constitutes substantially the residence district of the city. If the state itself could not prohibit the erection and maintenance of billboards in that section, as this court held in that case, by what right can the city do so? The supposed enabling act hereinbefore referred to could not confer on the city a power that the state itself did not have.

If the state and the city have not the power directly to prohibit the billboards in residence districts, how can they grant to the neighbors the power to make the prohibition effective by withholding their frontage consents?

The Haller Sign Works case is a precedent of controlling importance, for the case at bar, and it is impossible to sustain Section 707 of the ordinance in question without also in effect overruling the decision in that case.

The court in its opinion has departed from the principles laid down not only in the Gunning case and the Haller Sign Works case, but also in the case of People ex rel. Friend v. City of Chicago, 261 Ill. 16.

In the Friend case the court declared invalid an ordinance requiring frontage consents for the erection of a retail store building in a residence district. Every argument put forth by the court in

support of its holding in that case is applicable here in support of our contentions. There is nothing inherently harmful to the public about the conduct of a retail store; neither is there about the maintenance of a billboard, constructed under the present ordinance. It is a strong, safe, clean structure that makes no noise and emits no odor. As it is now constructed, and elevated above the ground, it neither causes nor invites the commission of crimes or nuisances, and does not endanger either persons or property. It is well known that retail stores if carelessly managed can become nuisances of the worst kind. Decaying food, fish or vegetable matter thrown out or allowed to accumulate in the rear of the stores, and rubbish of various kinds permitted to accumulate, will soon create a condition injurious to public health.

Yet this court very properly held that the fact that such conditions might arise in connection with stores was not a valid reason for making the erection and maintenance of retail stores in residence districts subject to frontage consents.

A well constructed, safe, secure and clean sign, advertising property, or merchandise for sale, is certainly as lawful, useful and inoffensive a structure as a retail store and is entitled to the same protection. The objectionable conditions that may accompany the conduct of a retail store would be connected with or arise out of the business itself whereas no objectionable condition arises, or is claimed to arise, from the use for which a billboard is constructed and maintained. The most that can be said is that sometimes trespassers have been known to make an improper use of a lot in the rear of a billboard, but not of the board itself and even such use by trespassers is practically eliminated by the manner in which the boards must be constructed under the present ordinance.

In discussing the cases of City of Chicago v. Stratton, 162 Ill. 494 (livery stable case); Swift v. People, 162 Ill. 534 (dram shop case); People v. Ericsson, 263 Ill. 268 (garage case), the court overlooked the fact that in none of those cases or any similar case were the requirements for frontage consents held valid on the ground that frontage consents had anything whatever to do with public health, safety, comfort or welfare, but in those cases and all similar cases the court was dealing with what it termed noxious or offensive occupations and not merely with the structures in which such occupations were conducted.

The decisions in all of those cases and all similar cases upholding the validity of the requirement for frontage consents, were based upon the ground that there were inherently and insparably connected with the conduct of a livery stable, garage or slaughter house certain evil or offensive conditions which affected particularly the immediate neighborhood by causing offensive odors, noise, vibrations, smoke and other offensive things to pass over and upon the property in the immediate vicinity, thus in fact committing a physical trespass; and ordinances therefore were held not unreasonable that required the consents of persons in the immediate neighborhood and who were alone directly affected by the carrying on of such occupations.

In the dram shop case an entirely different question was presented as the right of the state to control and regulate that business under its police power, is, by reason of its peculiar character unquestioned, and the state may and has delegated to municipalities a control over the conduct of that business which does not apply to other occupations.

It cannot and will not be contended that the mere erection of a structure, even though it be so designed architecturally as to be convenient for use as a livery stable, garage or slaughter house, but which is not so used, could be prohibited under the ordinances prohibiting the building of slaughter houses, garages and livery stables in residence districts, although the ordinances do in terms refer to the building or construction of livery stables, etc., it is the use of the buildings for such objectionable occupations that is in reality limited or prohibited, not the building of the structures themselves.

Comparing the use and purpose for which a bill board is erected and the character of the structure with the business of conducting livery stables, garages and slaughter houses is wholly without reason or basis and upon no rational theory can billboards be placed in the same class with, and subjected to the same regulations as slaughter houses, etc.

A billboard and the purpose for which it is designed and the manner of its construction and use under this ordinance, are safe, clean, sanitary, inoffensive and commit no physical trespass up- adjoining property.

Offenses committed on lots occupied by bill boards are committed by trespassers and have no connection whatever with the billboards themselves, or the business of maintaining advertisements thereon, the purpose for which they are constructed.

In the case of livery stables, garages, and slaughter houses, the offensive conditions arise out of and are inherently in and inseperably connected with the business itself.

The above are the grounds of distinction between the cases of livery stables, garages and slaughter houses on the one hand and retail stores and billboards on the other,—a distinction which this court has always clearly recognized and firmly adhered to until it rendered its opinion in the case at bar.

For the reasons above set forth we submit that a rehearing of this cause should be allowed, and because of the vast importance of the issues involved to appellee as well as others engaged in like business, counsel should be given an opportunity to more fully and adequately present the contentions of appellee by oral argument.

Respectfully submitted,

JOHN S. HUMMER,
Attorney for Appellee.

883 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court Begun and Held at Springfield on Tuesday, the Sixth Day of April, in the Year of Our Lord One Thousand Nine Hundred and Fifteen, within and for the State of Illinois.

Present:

James H. Cartwright, Chief Justice.
Justice William M. Farmer.
Justice Frank K. Dunn.
Justice Charles C. Craig.
Justice Orrin N. Carter.
Justice George A. Cooke.
Justice Albert Watson.
Patrick J. Lucey, Attorney General.
Warren C. Murray, Marshal.
Attest:
CHARLES W. VAIL, *Clerk.*

Be It Remembered, that to-wit, on the Ninth day of April, 1915, the same being one of the days of the said April term of Court, the following proceedings were had in said Supreme Court and entered of record in the words and figures following, to-wit:

No. 9820.

THOMAS CUSACK COMPANY, Appellee,
vs.
CITY OF CHICAGO et al., Appellants.

Appeal Superior Court Cook.

Now on this day the Court having duly considered the petition for rehearing filed herein and the Court being now fully advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

884 *Authentication of Record.*

Supreme Court, State of Illinois, ss:

I, Charles W. Vail, Clerk of the Supreme Court, do hereby certify that the foregoing is a true, full, and complete transcript of the record and proceedings in the case of Thomas Cusack Company, Appellee, vs. City of Chicago, a Municipal Corporation, Carter H. Harrison, Mayor of the City of Chicago, Henry A. Ericsson, Commissioner of Buildings of the City of Chicago, Appellees, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, this 10th day of May, A. D. 1915.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHAS. W. VAIL,
Clerk Supreme Court.

885 Be It Remembered, that to-wit, on the 15th day of April, A. D. 1915, there was duly filed by Thomas Cusack Company in the office of the Clerk of the Supreme Court of Illinois, a petition for writ of error with assignments of error from the Supreme Court of the United States to the Supreme Court of Illinois addressed to the Hon. James H. Cartwright, Chief Justice of the Supreme Court of Illinois, with the original order by the said Chief Justice upon the said petition allowing said writ of error, which document is in the words and figures as follows, to-wit:

886 Filed Apr. 15, 1915. Chas. W. Vail, Clerk of Supreme Court.

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the Supreme Court of Illinois, April Term, A. D. 1915.

No. 9820.

THOMAS CUSACK COMPANY, Appellee,
vs.
CITY OF CHICAGO, CARTER H. HARRISON, Mayor of the City of Chicago; Henry Ericsson, Commissioner of Buildings of the City of Chicago.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Illinois.

Petition for a Writ of Error, Returnable to the Supreme Court of the United States.

To the Honorable the Chief Justice of the Supreme Court of Illinois:

Now comes your petitioner, the Thomas Cusack Company, a corporation, by John S. Hummer, its attorney, and represents and shows to this Court, that on, to-wit, the 16th day of December, A. D. 1914, and of the December Term thereof, this, the Supreme Court of Illinois handed down its opinion and rendered its decision and entered its judgment against your petitioner in the above en-
887 titled cause, which cause was then pending before this Court, and wherein your petitioner was appellee, and the City of Chicago, Carter H. Harrison, Mayor of the City of Chicago, and

Henry Ericsson, Commissioner of Buildings of the City of Chicago, were appellants.

That on the 9th day of January, A. D. 1915, and within the time prescribed by the rules of this Court, your petitioner, Appellee, in said cause, filed its petition for a rehearing of said cause, which petition more fully appears by the records of this Honorable Court.

That on, to-wit, the 9th day of April, A. D. 1915, this Honorable Court entered its order denying the prayer of said petition and refusing to grant a rehearing of said cause, as fully appears by the records of this Honorable Court.

That by denying the prayer of your petitioner's said petition for a rehearing, and refusing to set aside said opinion, decision and judgment and to grant a rehearing of said cause, the said judgment thereby became a final decision and judgment of this Court reversing the decree of the Superior Court of Cook County rendered in favor of your petitioner and against the said appellants, and the said judgment of this Court became a final judgment of this Court, directing that the injunction issued by said Superior Court of Cook County restraining the said Appellants and each of them from enforcing the said Section Number 707 of Article XXIII of the Ordinances of the said City of Chicago (Chicago Code of 1911), be dissolved, and further directing and ordering the said Superior Court of Cook County to dismiss your petitioner's bill of complaint for want of equity.

888 That this, the Supreme Court of Illinois, is the highest Court of Law and Equity in the State of Illinois in which a decision of said cause can be held, and that in this Court the said final judgment was rendered against your petitioner, as above set forth, and that the record of this cause is now presented, from which said record it appears, and your petitioner represents and shows to this Court and to the Honorable the Chief Justice thereof as follows, to-wit:

1. That on the trial of said cause in the said Superior Court of Cook County, and in the review of the decree of said Court and in the proceedings in this cause before this Honorable Court, there was set up by your petitioner and drawn in question and finally, by the judgment of this Court, decided adversely to your petitioner and its contention, a claim of privilege and immunity claimed by your petitioner, under the Fifth Amendment to the Constitution of the United States, and also under the Fourteenth Amendment to the Constitution of the United States.

2. That from the record of this cause herewith presented, it appears that in this cause in the said Superior Court of Cook County, and in the review of the decree rendered by said Court by this Court and in the proceedings in said cause in this Honorable Court, there was drawn in question the validity of a certain ordinance of the said City of Chicago, and particularly a certain Section of said ordinance, to-wit, Section 707 of Article XXIII of the Ordinances of the City of Chicago (Chicago Code of 1911), which said section of said ordinance purported to regulate and control the manner of

the erection and control the location of various structures
889 therein described and defined, and particularly to regulate and control the location of bill boards and sign boards and limit the rights of the owners of property to erect and maintain such bill boards and sign boards upon their respective properties.

3. That by said record of this cause, it also is shown and appears that the validity of said Section 707 of Article XXIII of the Ordinances of the City of Chicago, was drawn in question in said cause by your petitioner upon the trial of said cause in the said Superior Court of Cook County, and in the review by this Honorable Court of the decree rendered in said cause in said Superior Court, and in the proceedings in said cause before this Court, and that said Section 707 of Article XXIII of the said ordinances of the City of Chicago was claimed by your petitioner to be invalid and unconstitutional, because in violation of and in contravention of the Fourteenth Amendment to the Constitution of the United States, in that said Section 707 of said Ordinance deprives your petitioner of its liberty and property without due process of law, and denies to your petitioner the equal protection of the laws.

4. That by said record it is shown and appears that the validity of said Section 707 of Article XXIII of the Ordinances of the City of Chicago was drawn in question in the said Superior Court of Cook County and in this Honorable Court upon the review of the decree rendered in said cause by said Superior Court, and upon the proceedings in said cause in this Honorable Court in this, that your petitioner claimed and contended in the said Superior Court
890 and in this Honorable Court that said Section 707 of said ordinance was a violation of the constitutional rights of your petitioner, and in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States and deprived your petitioner of its liberty and property without due process of law, denied to your petitioner the equal protection of the laws, and took the private property of your petitioner for public use without just compensation.

5. That the question of the validity of said Section 707 of Article XXIII of the Ordinances of the City of Chicago, under the Fifth and Fourteenth Amendments to the Constitution of the United States was raised and drawn into question in the said Superior Court of Cook County on the trial of said cause in said Court and in this the Supreme Court of Illinois on the review of the judgment rendered in said cause by said Superior Court, as depriving your petitioner of its liberty and property without due process of law, as denying your petitioner's private property for public use without just compensation, will appear and is shown by the said record in this cause herewith presented, and that it further appears and is shown by the said record, that the validity and constitutionality of said Section 707 of said ordinance has been finally decided adversely to your petitioner and its contentions by this the Supreme Court of Illinois and that in the said final decision and judgment and the proceedings of this Honorable Court in said cause certain errors were committed

to the prejudice of your petitioner which said errors will more
891 fully appear from the assignment of errors filed herein with this petition.

6. That, as appears from the said assignment of errors and from the matters and things above set forth, the final decision and judgment of this Honorable Court will deprive your petitioner of its liberty and property without due process of law, will deny to your petitioner the equal protection of the laws, and will constitute a taking of your petitioner's private property for public use, without just compensation in violation and in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States, and will deprive and take from your petitioner the rights, privileges and immunities accorded to it by the Constitution of the United States and by the Fifth and Fourteenth Amendments thereto. All of which more fully appears from the record and proceedings in this cause.

Wherefore, your petitioner prays that a Writ of Error may be issued in its behalf in this Court returnable unto the Supreme Court of the United States, for the correction of the errors complained of by your petitioner; that a bond may be approved and filed herein by your petitioner in accordance with the statute governing such proceedings; that the injunction issued by the Superior Court of Cook County in this cause may be continued in effect until this cause shall have been disposed of by the Supreme Court of the United States, and that a transcript of the record, proceedings and papers in this cause, duly authenticated may be sent to the
892 Supreme Court of the United States.

THOMAS CUSACK COMPANY,
Petitioner.
By JOHN S. HUMMER, *Its Attorney.*

Filed Apr. 15, 1915. Chas. W. Vail, Clerk of Supreme Court.

892½ [Endorsed:] Gen'l No. 9820, Term No. —. Supreme Court of Illinois. Thomas Cusack Co., appellee, vs. City of Chicago et al., appellants. Appeal from Superior Court Cook Co. Petition for Writ of Error. Returnable to Supreme Court of United States. John S. Hummer, Attorney, 69 West Washington Street, Chicago.

893 Filed Apr. 15, 1915. Chas. W. Vail, Clerk of Supreme Court.

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the Supreme Court of Illinois, April Term, A. D. 1915.

No. 9820.

THOMAS CUSACK COMPANY, Appellee,
vs.
CITY OF CHICAGO, CARTER H. HARRISON, Mayor of the City of Chicago; Henry Ericsson, Commissioner of Buildings of the City of Chicago, Appellants.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Illinois.

Assignment of Errors.

Now comes the petitioner, Thomas Cusack Company, a corporation, by John S. Hummer, its attorney, and with its petition for a writ of error returnable to the Supreme Court of the United States, files this, its Assignment of Errors, and says that in the record and proceedings in the above entitled cause there is manifest error in this:

1. The judgment of the Supreme Court of the State of Illinois in said cause deprives this petitioner of its liberty and property without due process of law, in violation and in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. The final judgment of said Supreme Court of the State of Illinois in said cause denies to this petitioner the equal protec-
894 tion of the law in violation and in contravention of the Fourteenth Amendment to the Constitution of the United States.

3. The final judgment of said Supreme Court of Illinois in said cause justifies, will constitute and have the effect of taking your petitioner's private property for public use, without just compensation, in violation and in contravention of the Fifth Amendment to the Constitution of the United States.

4. The said Supreme Court of Illinois erred in holding that said Section 707 (Frontage Consents Required), of said Article XXIII, (Billboards, Signboards, Signs and Fences) of the Ordinances of the City of Chicago (Chicago Code of 1911) will not, if enforced, deprive this petitioner of its liberty and property without due process of law, in violation and contravention of the Fourteenth Amendment of the Constitution of the United States.

5. The Supreme Court of Illinois erred in holding that said Section 707 of the said Article XXIII of said Ordinances of said

City of Chicago, if enforced, will not be a denial to this petitioner of the equal protection of the law in violation and in contravention of the Fourteenth Amendment of the Constitution of the United States.

6. The Supreme Court of Illinois erred in holding that said Section 707 of said Article XXIII of said ordinances of the City of Chicago, if enforced, will not constitute a taking of this petitioner's private property for public use without just compensation, in violation and contravention of the Fifth Amendment of the Constitution of the United States.

895 7. The Supreme Court of Illinois erred in holding that said Section 707 of said Article XXIII of the Ordinances of the City of Chicago, if enforced, will not deprive this petitioner of its liberty or property, without due process of law, in violation and in contravention of the Fifth Amendment to the Constitution of the United States.

8. The Supreme Court of Illinois erred in holding that the passage and enforcement of said Section 707 of said Article XXIII of said Ordinances of the City of Chicago was a valid exercise of its powers under the Constitution of the United States and under the Constitution of the State of Illinois.

9. The Supreme Court of Illinois erred in not holding said Section 707 of said Article XXIII of said Ordinances of the City of Chicago to be unconstitutional, null and void and of no force and effect.

10. The Supreme Court of Illinois erred in not holding that the said City of Chicago had no power to pass and enforce said Section 707 of said Article XXIII of said Ordinances of the City of Chicago.

11. The Supreme Court of Illinois erred in not affirming the judgment and decree of the said Superior Court of Cook County.

JOHN S. HUMMER,
Attorney for Petitioner.

Filed Apr. 15, 1915. Chas. W. Vail, Clerk of Supreme Court.

895½ [Endorsed:] Gen'l No. 9820, Term No. —. Supreme Court of Illinois. Thomas Cusack Co., Appellee, vs. City of Chicago et al., Appellants. Writ of Error from Supreme Court of United States to Supreme Court of Illinois. Assignment of Errors. John S. Hummer, Attorney, 69 West Washington Street, Chicago.

896 Filed Apr. 15, 1915. Chas. W. Vail, Clerk of Supreme Court.

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the Supreme Court of Illinois, April Term, A. D. 1915.

No. 9820.

THOMAS CUSACK COMPANY, Appellee,
vs.
CITY OF CHICAGO et al., Appellants.

Write of Error from the Supreme Court of the United States to the Supreme Court of Illinois.

Order.

This 15th day of April 1915 came the above named appellee, by John S. Hummer, its attorney, and presented to the Court and filed herein its petition praying that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceeding may be had as may be proper in the premises.

In consideration whereof the Court does allow the writ of error upon the plaintiff giving bond according to law in the sum of two thousand dollars ($2,000), which writ of error shall operate as a supersedeas.

JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

896½ [Endorsed:] Gen'l No. 9820, Term No. —. In the Supreme Court of Illinois. Thomas Cusack Company, Appellee, vs. City of Chicago, et al., Appellants. Order. John S. Hummer, Attorney, 69 West Washington Street, Chicago.

897 Be it remembered that on the 15th day of April, A. D. 1915, there was duly filed in the office of the Clerk of the Supreme Court of Illinois, by Thomas Cusack Company, appellee in this Court and plaintiff in error in the petition for writ of error, an original bond for writ of error from the Supreme Court of Illinois with acknowledgment of service and affidavit attached, a copy of which Bond is in words and figures following to-wit:

898 Know all men by these presents, that we Thomas Cusack Company, as principal, and Illinois Surety Company as surety, are held and firmly bound unto the City of Chicago, Carter H. Harrison, Mayor of the City of Chicago and Henry Ericsson, Commissioner of Buildings of the City of Chicago, in the penal

sum of Two Thousand dollars, $2000.00, to be paid to the City of Chicago, Carter H. Harrison, Mayor of the City of Chicago, and Henry Ericsson, Commissioner of Buildings of the City of Chicago, which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally by these presents duly executed and sealed with our seals this 15th day of April, in the year of our Lord One thousand nine hundred and fifteen.

Whereas, lately at the December term, A. D. 1914, of the Supreme Court of Illinois a judgment was rendered against the above bounden Thomas Cusack Company in a certain cause then pending in said Court, wherein the said City of Chicago, Carter H. Harrison, Mayor of the City of Chicago and Henry Ericsson, Commissioner of Buildings of said City of Chicago were appellants, and said Thomas Cusack Company was appellee, and which said judgment has become final, by the action of said court taken at the April term, A. D. 1915, in refusing and denying the petition of said Thomas Cusack Company for a rehearing of said cause; and the said Thomas Cusack Company having obtained a writ of error from the Supreme Court of the United States to reverse said judgment, and a citation directed to the said Appellants citing and admonishing them to be and appear in the Supreme Court of the United States to be held at the City of Washington in the District of Columbia, not exceeding thirty days from and after the date of the citation in said cause.

Now, therefore, the condition of the above obligation is such, that if the said Thomas Cusack Company shall prosecute
899 the said writ of error with effect, and pay all damages and costs, if it fail to make good its plea, then the above obligation to be void, otherwise to remain in full force and virtue.

THOMAS CUSACK COMPANY,
[SEAL.] By THOMAS CUSACK, *President.*

Attest:
L. B. READ, *Secretary.*

ILLINOIS SURETY COMPANY,
By JAMES S. HOPKINS,
Vice-President.

Attest:
[SEAL.] CHAS. E. SCHICK, *Secretary.*

Approved:
JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

Filed Apr. 15, 1915. Chas. W. Vail, Clerk of Supreme Court.

(Documents attached to Bond read as follows:)

Acknowledgment for Corporation.

STATE OF ILLINOIS,
County of Cook, ss:

I, Clara R. Condon, a Notary Public in and for the County and State aforesaid, do hereby certify, that Thomas Cusack President and G. B. Read, Secretary of the Thomas Cusack Company who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, and as the free and voluntary act of the said Thomas Cusack Company for the uses and purposes therein set forth, and caused the corporate seal of said Company to be thereto attached.

Given under my hand and Notarial Seal this 15th day of April, 1915.

[SEAL.] CLARA R. CONDON,
Notary Public.

900 STATE OF ILLINOIS,
County of Cook, ss:

I, J. Herbert Dodge, a Notary Public in and for the County and State aforesaid, do hereby certify James S. Hopkins, Vice-President, and Chas. E. Schick, Secretary of the Illinois Surety Company, who are personally known to me to be the same persons whose names are subscribed in the foregoing instrument as such Vice-President and Secretary, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, and as the free and voluntary act of the said Illinois Surety Company, for the uses and purposes therein set forth, and caused the corporate seal of said Company to be thereto attached.

Given under my hand and Notarial Seal, this 15th day of April A. D. 1915.

[SEAL.] HERBERT DODGE,
Notary Public.

901 UNITED STATES OF AMERICA,
State of Illinois, ss:

Be it remembered, that on the 15th day of April, A. D. 1915, there was duly filed in the office of the Clerk of the Supreme Court of Illinois, an original writ of error, which is hereby attached and is in words and figures following, to-wit:

902 Filed Apr. 15, 1915. Chas. W. Vail, Clerk of Supreme Court.

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the Judges of the Supreme Court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, at the December Term 1914, thereof, between the Thomas Cusack Company, Appellee, and the City of Chicago (a municipal corporation), Carter H. Harrison, Mayor of the City of Chicago, and Henry Ericsson, Commissioner of Buildings of the City of Chicago, Appellants, a manifest error hath happened, to the great damage of the said appellee, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from and after the date of the Citation in said cause, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 15th day of
903 April, in the year of our Lord One Thousand Nine Hundred and Fifteen.

Issued at office in the City of Springfield, with the seal of the District Court of the United States for the Southern District of Illinois, dated as aforesaid.

[Seal of the District Court, United States, Southern District Illinois.]

R. C. BROWN,
Clerk United States District Court,
Southern District of Illinois.

Allowed by
JAMES H. CARTWRIGHT,
Chief Justice, Supreme Court of Illinois.

Filed Apr. 15, 1915. Chas. W. Vail, Clerk of Supreme Court.

903½ [Endorsed:] No. —. United States of America, Southern District of Illinois. Thomas Cusack Company, Appellee, vs. City of Chicago (a municipal corporation); Carter H.

Harrison, Mayor of the City of Chicago; Henry Ericsson, Commissioner of Buildings of the City of Chicago, Appellants. Writ of Error to the Supreme Court of Illinois.

904 *Certificate of Lodgment*

SUPREME COURT,
State of Illinois, ss:

I. Charles W. Vail, Clerk of the Supreme Court, do hereby certify that there was lodged with me as such Clerk on the 15th day of April, A. D. 1915, in the matter of Thomas Cusack Company, Plaintiff in Error, vs. City of Chicago, a municipal Corporation, Carter H. Harrison, Mayor of the City of Chicago, Henry Ericsson, Commissioner of Buildings of the City of Chicago.

1. The original bond of which a copy is herein set forth.
2. A copy of the writ of error to file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, in said State, this 10th day of May, A. D., 1915.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHAS. W. VAIL,
Clerk Supreme Court.

905 And afterwards, towit, on the Seventeenth day of April, A. D. 1915, a certain Citation was filed in the office of the Clerk of the Supreme Court in words and figures following, to-wit:

906 UNITED STATES OF AMERICA, *ss:*

The United States of America to the City of Chicago (a municipal corporation); Carter H. Harrison, Mayor of the City of Chicago; Henry Ericsson, Commissioner of Buildings of the City of Chicago, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington. D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of Illinois, wherein the Thomas Cusack Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable James H. Cartwright, Chief Justice of the Supreme Court of Illinois, this 15th day of April, in the year of our Lord One Thousand Nine Hundred and Fifteen.

JAMES H. CARTWRIGHT,
Chief Justice.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

We hereby acknowledge due service of the within Citation this 16th day of April, A. D. 1915.

CITY OF CHICAGO (A MUN. CORP.);
CARTER H. HARRISON,
Mayor of the City of Chicago;
HENRY ERICSSON,
Commissioner of Buildings of the City of Chicago,
By JOHN W. BECKWITH,
LOVING R. HOOVER,
Their Attorneys.

906½ [Endorsed:]Supreme Court fo Illinois. Thomas Cusack Company, Appellee, vs. City of Chicago et al., Appellants. Citation. Filed April 17, 1915. Chas. W. Vail, Clerk of Supreme Court.

907 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Illinois, ss:

In obedience to the commands of the within writ I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court of Illinois, in the City of Springfield, this 10th day of May, A. D. 1915.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHAS. W. VAIL,
Clerk Supreme Court of Illinois.

908 In the Supreme Court of the United States, October Term A. D. 1915.

Docket Number 463.

THOMAS CUSACK COMPANY, Plaintiff in Error,
vs.
CITY OF CHICAGO et al., Defendants in Error.

Writ of Error to Supreme Court of the State of Illinois.

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective attorneys, that the Clerk of the Supreme Court of the United States cause to be printed as the record to be considered by the Court on the hearing of said cause the following parts of the transcript of the record certified up from the Supreme Court of Illinois and filed herein.

Proceedings in the Superior Court of Illinois (Trial Court).

1. Placita.
2. Bill of complaint, with amendment thereto.
3. Summons and return thereof.
4. Order referring application for temporary injunction to Master in Chancery.
5. Temporary Injunction.
6. Joint and several answer of defendants.
7. Replication to answer.
909 8. Order that original answer stand as answer to amended bill.
9. Decree of Superior Court of Cook County.
10. Testimony of the several witnesses as set forth in the printed abstract of evidence hereto attached (pages 60 to 193).
11. Order allowing appeal to Supreme Court of Illinois.
12. Certificate of Clerk of Superior Court of Cook County to transcript of record.

Proceedings in Supreme Court of Illinois.

1. All orders entered in said cause.
2. Judgment of Court.
3. Opinion of Court.
4. Petition of appellee for rehearing.
5. Order denying petition for rehearing.
6. Assignment of errors on record of Superior Court of Cook County, Illinois, filed in Supreme Court of Illinois.

Proceedings In re Writ of Error to Supreme Court of United States.

1. Errors assigned on record of Supreme Court of Illinois.
2. Petition for writ of error returnable to Supreme Court of United States.
3. Writ of error allowed by Chief Justice of Supreme Court of Illinois with all endorsements thereon.
4. Citation to appellants (defendants in error here), with endorsements thereon.
5. Bond.

ROBERT W. CHILDS,
Attorney for Plaintiff in Error.
RICHARD S. FOLSOM,
Corporation Counsel;
LOVING R. HOOVER,
Attorneys for Defendants in Error.

910–958 [Endorsed:] 463-15/4727. Docket No. 463. October Term, 1915. In the Supreme Court of the United States. Thomas Cusack Co., Pl'f in Error, v. City of Chicago et al., D'f'ts in Error. Error to Supreme Court of Illinois. Stipulation in reprinting record.

* * * * * * *

959 FRANK W. BEAVER, witness for complainant being duly sworn testified:

I am manager of the Chicago branch of the Thomas Cusack Company in whose employ I have been for five years and prior to which time I was connected with the Gunning System which engaged in outdoor advertising.

The Cusack Company engages in outdoor advertising by means of bulletin boards, signs on the sides of buildings, electric signs and does a general sign business. It has located fourteen (14) boards in residence blocks, since the passage of the ordinance by which frontage consents are required.

On the South Side one board was erected at the southwest corner of Garfield boulevard and Justine street. At the northeast corner of Grand boulevard and 40th street, at 2909 Michigan avenue, 4904 Michigan avenue. On the North Side at the Southeast corner of Diversey boulevard and Southport avenue, 1405 Diversey boulevard, and at 632 Sheridan road; on the West Side at 816-834 Ashland boulevard, just east of Racine on Jackson boulevard, 2450 Jackson boulevard, at Marshall boulevard and Francisco avenue, at the northeast corner of 43rd and Washington boulevard, at the southeast corner of 49th and Washington boulevard. The board located at Racine and Jackson boulevard, is hardly in a residence block.

The boards just mentioned are billboards built right on the ground on vacant lots and are distinguished from roof signs and wall signs.

960 Permits for the erection of boards on the West Side marked "Complainant's Exhibits 3, 4, 5, 6, 7 and 8, offered and received in evidence over the objection of solicitor for defendants, which exhibits are all similar in form, so far as the printed matted contained thereon, which is in words and figures as follows:

"City of Chicago—Department of Buildings.

Office of the Commissioner of Buildings.

No. A65093.

May 24th, 1912.

Permission is hereby granted to *Thos. Cusack Co.* to erect a *Sign Board — must comply with City ordinances* — feet front, by — feet deep, — feet high from ground level to highest part thereof— No. *814-34 S. Ashland Ave.* Street.

This permit is granted upon the express condition that the said *Thos. Cusack Co.*, in the erection of said building shall conform in all respects to the ordinances of the City of Chicago, regulating the construction of buildings in the city limits, and may be revoked at any time upon the violation of any of the provisions of any of the said ordinances.

By order of the Commissioner of buildings,

HENRY ERICSSON,
Commissioner of Buildings.

Amount of Permit, $12.00.

Received the amount indicated hereon — 191-

EDWARD COHEN,
City Collector.

Not valid unless receipted by the City Collector."

(All except italicized portion of above is part of printed form.)

Permits for boards constructed on the North Side introduced in evidence and marked "Complainant's Exhibits 9 and 10, over the objection of solicitor for defendants, which exhibits are similar
961 in form to that hereinbefore set out. Permits for the boards erected on the South Side introduced in evidence, marked "Complainant's Exhibits 11, 12, 13 and 14 over the objection of solicitor for defendants, which exhibits are similar in form to that hereinbefore set out.

Copy of permit inserted on pages 7 and 8 of the original bill of complaint herein is a correct copy of the original permit issued by the city. Complainant company has leases for the lots for the maintenance of the boards mentioned and is paying rent as specified in said leases.

Leases of lots introduced in evidence and marked "Complainant's Exhibits 15 and 16," over the objection of solicitor for defendants, in words and figures as follows, to wit:

"Bulletin Contract.

Established 1875.

Thos. Cusack Company.

Out-Door Advertising.

15th & Throop Streets.

CHICAGO, *Nov. 21st,* 1912.

In consideration of *Thirty-five & no/100* Dollars (*$35.00*) per year, payable in *semi annual* installments, the receipt of first installment thereof being hereby acknowledged, the undersigned lessor hereby leases exclusively to Thomas Cusack Company, a corporation, the premises (with the right of ingress and egress to and from the same), known as *The Vacant property* at the *S. E. cor. Diversey Blvd. & Southport Ave.,* Chicago, Illinois, for the erection and maintenance of advertising sign boards thereon from the *1st* day of *Sept. 1912,* to the 1st day of *Sept., 1913,* and, on like terms and conditions for the next fifteen succeeding years, unless this lease
962 shall be sooner terminated by the lessee giving written notice of such termination ten days before the end of any current year, which right to terminate this lease in the manner aforesaid is hereby given said lessee. It is expressly agreed that the lessor may

order the advertising sign boards removed at any time by giving the lessee *10* days' notice in writing, in case the lessor sells the premises, or improves same by erecting a building on said premises, and upon the removal of said boards the lessor shall refund to the lessee the rent paid in advance, pro-rata, from the time of the removal of its boards. In case the advertising sign boards shall be removed pursuant to any such notice, and the proposed sale, or improvement should not be completed forthwith, then the lessee shall again have the exclusive right to replace its boards on said premises, and this lease shall thereupon continue in force for the term above mentioned. Should the view of the board become in any way obstructed, the lessee may terminate this lease at any time and the lessor shall thereupon refund to the lessee, the rent paid in advance, pro rata, for the term then unexpired. All boards and material placed on the premises under this lease shall remain the property of the lessee, and may be removed by it at any time.

In case the City of Chicago shall pass any ordinance restricting the size or location of signs or bill boards or requiring any license fee thereon then this lease may at the option of said Thomas Cusack Company be terminated at any time, and upon said termination any rent paid by said Thomas Cusack Company for the unexpired term of this lease shall be repaid to it by the other party hereto.

Eli Goldstein, [*Seal.*]

Address 118 No. La Salle St.

THOMAS CUSACK COMPANY, [SEAL.]

By *O. C. Schoepfer.*"

Italicized portion of above exhibit is in writing; all other parts thereof being printed.

963 Complainant's Exhibit 16 calls for an annual rental of $60 per year and runs to the 20th day of June, 1914.

Lease of lot for the board located on Sheridan road together with receipts of the payment of rent for such space introduced in evidence and marked "Complainant's Exhibits 17, 18, 19, 20, 21, 22, 23 and 24, respectively, over the objection of solicitor for defendants.

Said lease is in words and figures as follows, to wit:

"Contract.

Thos. Cusack Company,

15th & Dearborn St.

Chicago, Ill.

This Indenture made and entered into this the fourteenth day of August, 1912, by and between L. R. Williams, party of the first part, and Thos. Cusack Company, a corporation, party of the sec-

ond part, both parties being of the City of Chicago, County of Cook, State of Illinois.

Witnesseth:

That for and in consideration of the sum of Six Hundred ($600.00) dollars per annum, payable quarterly in advance by the party of the second part to the party of the first part, the party of the first part hereby agrees to lease to the party of the second part the sole and exclusive right to erect and maintain signboards with a privilege of illuminating same on the vacant property known as lots 1 and 2 in Peleg Hall's addition to Chicago in Northwest fraction ¼ of Section 21, Township 40, Range 14; otherwise known as the 235 feet more or less of vacant property next East and adjoining 3628 Sheridan Road, Chicago, Illinois.

The party of the first part hereby reserves the right to order the removal of the signboards by giving the party of the second part thirty (30) day- notice in writing of their intentions so to do
964 in the event that the property is sold or leased for other than advertising purposes; or in the event that the property is to be improved by building. Second party agrees to remove their signs and all property on receiving said thirty (30) days' notice.

This lease to be in full force and effect for a period of one (1) year from and after August 15th, 1912. Party of the second part also agrees that H. O. Stone & Co. are to have the privilege of erecting and maintaining their sign on the above described property during the term of this contract.

L. R. WILLIAMS, [SEAL.]
——— ———. [SEAL.]
THOMAS CUSACK COMPANY. [SEAL.]
By J. M. LOUGHLIN. [SEAL.]"

Said receipts show payment of $1,050 as rent from August 14, 1912, to May 15, 1914.

Leases of lots introduced in evidence and marked "Complainant's Exhibits 25, 26 and 27" over the objection of solicitor for defendants which leases are in similar form as Complainant's Exhibit 15 hereinbefore set out; Complainant's Exhibit 25 calling for annual rental of $15 and running to February 5, 1913; Complainant's Exhibit 26 calling for an annual rental of $75 and running for three years; Complainant's Exhibit 27 calling for an annual rental of $1,200 and running to May 9, 1914, which rental as called for therein has been paid by the complainant.

Leases of lots introduced in evidence and marked "Complainant's Exhibits 29, 30, 31, 32, 33, 34 and 35" over the objection of solicitor for defendants, which leases, with the exception of Complainant's Exhibit 29, are similar in form to Complainant's Exhibit 15 hereinbefore set out; Complainant's Exhibit 29 contains substantially the same provisions as Complainant's Exhibit 15, provides for
965 an annual rental of $90 and runs to June 1, 1913; Complainant's Exhibit 30 provides for an annual rental of $50 and runs to February 12, 1913; Complainant's Exhibit 31 calls

for an annual rental of $25 and runs to June 22, 1913; Complainant's Exhibit 32 calls for an annual rental of $10 and runs to February 7, 1913, with no provision for renewal; Complainant's Exhibit 33 calls for an annual rental of $100 and runs to May 4, 1914, with no provisions for renewing, Complainant's Exhibit 34 calls for an annual rental of $150 and runs to November 1, 1913, with no provision for renewal; Complainant's Exhibit 35 calls for an annual rental of $25 and runs to August 11, 1913.

The City of Chicago annually inspects the bill boards and the Cusack Company has been paying the city the inspection fees provided for by ordinance. Boards are also inspected at the time of their erection by inspectors of the building department.

When the inspectors find a board unsecure or unsafe or out of repair the city sends us a notice to repair it, which we immediately do.

If new boards are found not to comply with the ordinance in any respect, the city notifies us and we immediately take care of it. Duplicate permit for the board erected at the northeast corner of Washington boulevard and 43rd avenue, marked Complainant's Exhibit "36."

The city after making its annual inspection of our boards sends us a warrant which we pay.

966 Warrants for inspection fees for boards marked Complainant's Exhibits "37-38-39-40-41-42-43-44-45 and 46."

No inspection charge is made in the case of the erection of new boards. On July 17 or 18 we received a notice from the commissioner of buildings to take down the board on Sheridan road.

Notice from the building department marked Complainant's Exhibit "47" as follows:

"Department of Buildings.

Chicago.

Room 702, City Hall.

Henry Ericsson, Commissioner.
Robert Knight, Deputy Commissioner.

July 17, 1913.

Thos. Cusack Co., W. 15th & Troop Sts., City.

You are hereby notified as owner, agent, lessee or occupant of premises known as *614-28 Sheridan road* to comply with the following requirements of the Revised Municipal Code, within *Forty-eight hours* Days after date.

Remove this bill-board within the aforesaid time, or same will be taken down by the Fire Department.

"Final Notice."

(*Personal Delivery.*)
(*J. McH.*)

Failure to comply with this notice within the aforesaid time will result in matter being placed in the hands of the Law Department for prosecution.

Respectfully yours,
(Signed) HENRY ERICSSON,
Commissioner of Buildings."

967 Complaints or notices from the city of boards that need repairing or are in violation of the ordinance come to me and I handle the same and keep myself familiar with them. During the year 1913 and thus far during the year 1914 no complaints had been received from the city as to the safety or condition of any of the boards designated by me as having been erected since the passage of the ordinance in question.

We were notified that the board on West 24th street or Marshall boulevard and Francisco avenue, and had broken braces caused from the construction of a building adjoining same and we immediately fixed the board. None of the boards are located except on private property for which we hold leases.

The surface of the ground around the boards mentioned is kept clean and the weeds and grass are trimmed and we do not permit any debris to accumulate around these boards. All these boards are raised up from the ground. We have a crew of two men with a horse and wagon and in the summer time two crews that level off the ground around the boards and remove anything that might be there. None of these boards hide any beautiful view.

The signs and structures are kept clean and wholesome and the signs are painted every four (4) months and oftener.

The advertising on the boards is of automobiles, Quaker Oats, Blue Valley Butter, and Meadow Gold Butter and merchandise of every day use.

No odor or stench of any kind emanates from these boards or the material of which same are made or the faces of same.

968 Letter offered in evidence marked "Complainant's Exhibit 50," in words and figures as follows:

"CHICAGO, July 10, 1913.

Thomas Cusack Company, West 15th & Throop Sts., City.

GENTLEMEN: I wish to again call your attention to bill board on Sheridan road that requires frontage consent in order to maintain it. Said frontage consent has only been supplied in part.

At the beginning of last month you were instructed by this department to supply the lacking frontage consent within four or five days' time from the date of the letter or it would become necessary to remove the board.

This is a serious matter and prompt action must be had in one direction or the other without further delay.

Kindly have your Mr. Beaver call at once with reference to this matter.

Very respectfully yours,
(Signed) HENRY ERICSSON,
Commissioner of Buildings."

The advertisements on the bill boards are changed by removing the face of the signs which are painted in the studio. No odor emanates from the boards.

The sign at Sheridan road referred to in the letter marked "Complainant's Exhibit 50" is illuminated by electricity. The fourteen bill boards referred to have been kept in the same condition as they were at the time of their inspection by the inspector.

Cross-examination:

Mr. Hoover: How many bill boards, surface bill boards, are now maintained by the Thomas Cusack Company in residence
969 blocks?

Mr. Hummer: I object to that as not cross-examination.

The Court: Well, now, that question precipitates the scope of the inquiry which you contend for, doesn't it?

Mr. Hoover: Yes, sir.

The Court: You claim the right to go into the whole character of their business, the character of the bill boards all over the city, not only this company's, I take it, but any company?

Mr. Hoover: Yes, sir, any of them.

The Court: I think I will sustain the objection as not proper cross-examination, and not pass on the broad question of the admissibility of the evidence.

Mr. Hoover: Exception.

Mr. Hoover: How many surface bill boards are maintained by the Thomas Cusack Company in the City of Chicago for which the company has no permits from the city?

(Objection on the ground question is not cross-examination sustained; exception.)

The photograph marked "Complainant's Exhibit 49" shows a lot of stones and debris behind the bill board of the complainant on Sheridan road, which usually are to be found in back of that board. The complainant has a crew which goes around the boards keeping the grass down and keeping the place free of papers or litter that accumulate there by the wind over night. When I said the Cusack Company had received no complaint as to the fourteen boards, I meant complaints as to the safety of the boards.

970 Redirect examination:

The name "Thomas Cusack Company" is on the top of the fourteen boards. It is admitted that a permit substantially such as set

out in the bill of complaint was issued for the erection of the board on Sheridan road.

GEORGE L. JOHNSON, called by complainant, testified:

That he is the sales manager for the complainant company and has been such for about five years; that he has been engaged in business of out door advertising twenty years at Indianapolis, Cincinnati and Chicago. He is familiar with the boards testified about by Mr. Beaver in a general way. That the location of the board on Sheridan road is of unusual value from an advertising standpoint, its value consisting not alone of its worth to advertisers, but also to the complainant in advertising the improvement in the complainant's method of advertising. That the most desirable locations from an advertising standpoint are those in residential sections for the reason that the advertising of commodities is closer to the place where the same are sold or purchased. That each location has a separate value, but are all a part of a general scheme of advertising. That there is no other location where outdoor advertising is similarly located or surrounded, so far as physical surroundings are concerned, to the board on Sheridan road. The board can be seen from a long distance and does not hide any beautiful view. That behind the board
971 are weeds and rubbish; that it would be difficult to attempt to estimate the loss in money to the complainant if this location were lost. The loss of same would have a great affect on the prestige of the complainant's business. The loss would amount to a large sum of money which would be true, more or less, of the loss of any of the locations testified to by Mr. Beaver. The loss could not be estimated in dollars and cents if all of the fourteen locations were lost. If these locations were taken away the complainant would lose the unexpired portion of contracts with its advertisers.

Cross-examination:

To the east of board on Sheridan road is the lake and to the north is the shore of Lake Michigan. This board is about one hundred feet long. Sheridan road is about one hundred feet wide and the board is at the head of Sheridan road.

Redirect examination:

This board does not hide any beautiful view.

G. B. READ, called by complainant, testified:

That he is the general manager of the complainant company and has been for approximately four years; that prior thereto he was with the Gunning System for about eight years acting in the same capacity. That the complainant company has invested in its entire plant upwards of three-quarters of a million dollars and has in Chicago an average of three hundred and fifty to four hun-
972 dred employes as artists, designers, carpenters, painters, clerks, salesmen, etc. That the complainant paid about twenty-five hundred dollars personal property taxes last year. This board does not hide any beautiful view; it has a great value because of its pe-

culiar location, as it is on a boulevard where high class people travel in great numbers. There is no other location in Chicago similarly situated or similar in character having as great a value as this board. The complainant has at times keen competition in Chicago. Complainant has contracts with advertisers running from one to two years which often have provisions for renewals for like terms. The complainant would suffer a large loss were it required to move its boards from these fourteen locations, which can not be estimated in money accurately, but would run into thousands of dollars. The boards cost a great deal to erect. The complainant pays yearly two hundred thousand dollars a year rental for these locations. The length of the board at Sheridan road is about two hundred feet.

Cross-examination:

Cost of the board at Sheridan road was about six hundred dollars. Sheridan road boards contained a sign advertising Jelke Butterine. I do not know whether the complainant company had a contract with the Jelke Company for that advertisement.

Redirect examination:

The space occupied by the Jelke sign was under contract before this bill was filed.

Counsel for complainant offers in evidence sections 707, 711, 701, 705, 706 of the Chicago Code of 1911, and an amendment to
973 section 706 passed by the city council, February 6, 1913, together with section 698.

Section 707 requires frontage consents to erect bill boards in residence blocks (set out in decree).

Section 711 is as follows:

"711. Definition of word "block."] Whenever a provision is made in this chapter that frontage consents shall be obtained for the erection, construction, alteration, enlargement or maintenance of any building or structure in any block, the word "block", so used, shall not be held to mean a square, but shall be held to embrace only that part of a street bounding the square, which lies between the two nearest intersecting streets, one on either side of the point at which such building or structure is to be erected, constructed, altered, enlarged, or maintained, unless it shall be otherwise specifically provided."

Section 701 requires a permit to erect sign boards (set out in decree).

Section 705 requires annual inspection (set out in decree).

Section 706, as amended, is as follows:

"(a) The fee to be charged for permits issued for the erection or construction of bill boards or sign boards or for the alteration thereof shall be two dollars for each twenty-five lineal feet of bill board or sign board erected or altered. An annual inspection fee shall be charged every person, firm or corporation as owner, or in possession, charge or control of any bill board or sign board now in existence or hereafter to be erected, which shall be one dollar for each

twenty-five lineal feet of bill board or sign board or fractional part thereof."

Section 698 limits the size of bill boards (set out in decree).

974 Counsel for defendants concedes that complainant has on file with the city clerk of the City of Chicago a bond in the sum of twenty-five thousand dollars ($25,000), as required by paragraph 8 of section 706 Building Code.

Mr. Hummer: Now, in view of the way that we have confined this by stipulation, I am through. The plaintiff rests.

Mr. Hoover: Whether or not the court desires at this time to pass upon the questions that have come up in the introduction of some of the evidence, made by myself, I do not know, but I am prepared to go ahead with our defence, or take up all of those questions now.

The Court: The evidence that is in, it is over your objection.

Whereupon the complainant rested its case.

Thereupon, the defendants, to maintain the issues in their behalf, introduced the following evidence, to wit:

PETER C. HOEY, called by the defendants, testified:

That he is secretary of the building department of the City of Chicago and has been since July, 1911: that applications for permits for the erection of bill boards are referred to him; that in cases where it is known the location at which permits are sought is not in residence blocks, no inspection is made prior to the issuance of permits. That the bill board located at 628 to 614 Sheridan road is in a residence block, within the terms of section 707 of the Chicago

975 Code; that the time application for permit was made, frontage consents were filed by the complainant; that the permit was issued with the understanding that the frontage consents so filed were sufficient.

Mr. Hoover: Was there any understanding, did you have any understanding with the Thomas Cusack Company as to the issuance of permits upon the filing of frontage consents, the same to be subject to revocation if the frontage consents were found to be insufficient?

Witness: Yes.

Mr. Hummer: I object to that for two reasons; first, because it calls for a conclusion; secondly because it is immaterial.

The Court: Yes, I will sustain the objection.

(To which ruling of the court, the defendant, by its counsel, then and there duly excepted.)

The frontage consents filed at the time of the issuance of a permit for the board on Sheridan road were sent to the map department for verification, and it was then found that the frontage consents were insufficient.

Mr. Hoover: Did the Thomas Cusack Company make any representations as to the sufficiency of the frontage consents filed with you at the time that the permit was issued?

Mr. Hummer: I object to it as wholly immaterial.

Mr. Hoover: I want to show the position in which they come in here; I want to show what transpired right at the time they came in and filed this bill, and I think your Honor will see the relevancy of it in a moment. I want to show by this witness that the
976 manager, or man representing the Thomas Cusack Company, who usually procurd the permits for the construction of bill boards, filed frontage consents at the time that the application for a permit for this bill board was filed, represented that they were sufficient, and that, thereafter, the frontage consents were found, after investigation, to be insufficient, and to contain the signatures of two parties who did not own, nor were the agents of the owners of property in that block, and to show that the building commissioner then issued a notice to the complainant, directing them to remove this board within a specified length of time, and that, prior to the expiration of the notice, the Thomas Cusack Company saw the building department, that is Mr. Hoey, and agreed to secure sufficient frontage consents if the destruction of the board would not be—if the board would not be destroyed until the following Monday, July 24th, I believe, and that, relying upon that promise, the building commissioner refrained from destroying the board, and, upon the following day, the complainant came into this court and asked for an injunction restraining the building department from interfering with that board, setting up the permit and the facts, and that they had a contract with the owner.

Mr. Hummer: My answer is, it is wholly immaterial from their standpoint. If the ordinance is valid, then if we haven't the permits, then I mean, we haven't the frontage consents, they could tear the board down and our case must fail; if the ordinance is invalid, it is immaterial how much we struggled to try to get front-
977 age consents, both before and after.

Mr. Hoover: They have alleged—I do not think it is a material allegation—but they have seen fit to allege that they secured a permit, and they rely upon that permit—and that, relying upon that permit, they made contracts to erect the board, and spent money.

Mr. Hummer: No, that is not our contention.

Mr. Hoover: Well, that is your allegation in your bill.

Mr. Hummer: I do not think so, but if it is so, we have not proved it, and we do not claim it. We only got the permit because another portion of the ordinance requires it, but that is a point of duty.

The Court: Mr. Hummer, do you claim that any rights have accrued to you because of money invested——

Mr. Hummer: On the strength of the permit?

The Court (continuing): —on the strength of the issuance of the permit.

Mr. Hummer: No, not that the permit was improperly issued, but it was improperly issued if the ordinance is valid, section 707.

The Court: Well, then, is it your position that you predicate no rights upon the issuance of a permit, as such, upon the theory that the permit has been issued to you, that you haven't made contracts or in-

vested money after the issuance of a permit, placing reliance on it, and you would have the city restrained from revoking it, if you make no contention of that kind——

978 Mr. Hummer: I understand that is the only position I can take.

The Court: Then, I will shut out this evidence.

Mr. Hoover: You make no point on that?

Mr. Hummer: No. Our contention, or our case, rests solely upon the invalidity of section 707. If it was invalid, then we do not have to get permits.

The Court: You claim it was an unreasonable exercise of police power.

Mr. Hummer: Yes, and then, if it was valid, the getting of a permit would not protect us.

Mr. Hoover: But as to the relief prayed for, as to this particular board, I would like to show, by this witness and others, if required, what I offered to show before, showing that the complainant, so far as this particular board is concerned, is before this court with unclean hands.

Mr. Hummer: I do not believe that to show your building commissioner wasn't doing his duty—the ordinance says directly that he has no right to issue a permit until he knows the consents are there. He has no right to let people go on and then say you haven't enough; he should determine beforehand. It is making a case of negligence on the part of the building commissioner, which we do not allege or claim. The ordinance says no permit shall issue "until or unless," and so forth.

Mr. Hoover: It states that written consents shall be filed with the building commissioner before a permit will be issued for the erection, location and construction of such bill board or sign board.

They were filed, but, in that department, where they have
979 so many permits, the custom is, as I understand, that the building department has issued permits on the representation of the applicants and then send them down to the map department, which has a record of those who own property on streets and, for convenience, at that time, the building department issues permits upon representations made, but, if they find, on examination, that the frontage consents are insufficient, the permit is revoked.

The Court: Well, Mr. Hummer, that would seem material on that theory.

Mr. Hummer: Which theory?

The Court: That is, if the representatives of the Thomas Cusack Company went to the city and made misrepresentations, on the strength of which a permit was issued.

Mr. Hummer: How can it have? If they had no right to ask it, if they had no right to ask for frontage consents, how would the fact that a man said these were sufficient be material? As a matter of fact, he believed at the time, that they were sufficient.

The Court: It is admitted that the city had the right to ask for frontage consents?

Mr. Hummer: Oh, no, that is admitting our case away, because they had no right to demand them. There was some dispute up there as to the curve, whether it could be counted, and so forth.

The Court: Well, do you claim that there was wilful misrepresentation? I will let you go into it, if you thing there was flagrant misrepresentation; if you make any such claim I will let you go into it.

980 Mr. Hoover: I do. I propose to show that the permit was issued on misrepresentations, that they were sufficient and secondly, after notice had been served that the board must be torn down, within a certain time, as designated in the notice, these people came in and agreed to procure frontage consents by the following Monday, and that the building commissioner agreed not to destroy the board, and, between those two times, between the time the agreement was made and the time that they were to come in with new frontage consents, they came before this court and asked for an injunction, and obtained a temporary injunction, so that the board has been there ever since that time.

The Court: I will sustain the objection.

Mr. Hoover: Well, I have stated what I wanted to prove by the witness, and I take exception to the court's ruling.

(To which ruling of the court, the defendant, by its counsel, then and there duly excepted.)

The Court: I have understood from the testimony that all of the fourteen were erected in violation of the express terms of this ordinance.

Mr. Hummer: Yes, I will not raise that question.

Mr. BEAVER, recalled for further cross-examination, testified:

The crews of the complainant company carry away miscellaneous waste, tin cans, paper and things of that sort around these boards, if there are any. These crews go to other boards of the complainant company than the fourteen testified about. There are two

981 crews in the summer-time. The fourteen boards testified about were the only boards erected by the complainant company in blocks in which more than half of the buildings are used exclusively for residence purposes since the passage of the ordinance requiring consents for the erection of such boards. Complainant company erected a board facing Irving Park boulevard and Crawford street. The crews of the complainant company do the same things at that board as at the other boards owned by it.

PETER HOEY recalled by defendants testified:

That the records of the City of Chicago show that the complainant company maintains 998 surface bill boards within the City of Chicago. The complainant company maintains more surface bill boards in residence blocks than the fourteen mentioned.

Mr. Hoover: Of those that are now maintained by the Thomas Cusack Company in residence blocks, other than the fourteen mentioned yesterday, are there any of those that were erected without a permit?

Mr. Hummer: I object to that; the witness has shown that he has not the requisite knowledge.

Mr. Hoover: Are reports made on the applications as to their lo-

cation, whether or not the buildings are used for residence purposes in the particular block?

Mr. Hoey: Yes.

Mr. Hoover: Who are those made by?

982 Mr. Hoey: By the inspectors in the respective districts where the boards would be located.

Mr. Hoover: So they render reports?

Mr. Hoey: They do.

Mr. Hoover: Do these reports come to you?

Mr. Hoey: They do.

The Court: I think I will strike out his answer.

Mr. Hummer: I do not think he answered that, your Honor. The objection would be sustained, I take it.

(Exception taken by Mr. Hoover.)

EMILIE MARTINSON, called by defendants, testified:

That she lives at 3938 North Crawford avenue, Chicago, which is her own home, and has lived at that place for eleven years. That there is a bill board about sixty feet north of her home facing partly on Crawford avenue and partly on Irving Park boulevard. That the lot immediately in front and back of this board is covered with bottles, cans and all kinds of refuse and is used as a public toilet. That people getting off of the street cars, the corner being a transfer corner, go behind the board up against the supports. That her home is so situated that she can see what goes on back of the board and that the front porch can not be used at all. Some men are so bad and vulgar that they go behind the board exposing themselves and wagging their privates at you. This condition has existed ever since the board was there. Papers, rags, bottles and cans and almost everything you can think of is thrown back of the board.

983 High weeds, about three and one-quarter feet high grow behind the board. I have never seen the weeds or grass cut or trimmed, or the place cleaned up.

Cross-examination:

The board is about two or three feet back from the street and about three feet, three inches raised above the ground. I have seen women with little children go behind the board. People did not do this in that lot before the board was erected. I never saw a policeman around there. There is a board fence enclosing the back of my lot and an alley behind that. I live next door to the lot where this bill board is, there being an empty lot between my house and the bill board. Beer bottles and milk bottles I have seen thrown in the lot back of the board. That she could not count the number of bottles thrown there. That there was not much in front of the board, but the bottles, papers, rags and everything were right back of the board. That the things thrown behind the board have been lying there for months and the place has never been cleaned up. That she does not throw anything back of the board. That the people living around her burn up their refuse in their lots, not in the alleys. That this matter was reported by her husband to the corporation counsel, but not to the police. That she reported a man who was

going around there making an exhibition of himself. That there are four corners at that place, on one of which is a residence and on the other a fruit store above which are flats and that all around that place are residences. That she never saw any one com-
984 mitting a nuisance in the alley behind her lot, or behind the board fence. That the board has been there about two years and that prior to that time the lot was all grass. That it had been planted. That there was not much paper on the vacant lot before two years ago. That there was hardly any debris, bottles or paper on that lot prior to two years ago. That that corner became a transfer corner about two years ago and the board was put there later. That the people get-ing off the cars would walk around the ends of the board to get behind the same and would go up against the supports.

Redirect examination:

There are about ten buildings on the side of my street between the two intersecting streets and they are used for private residences. On the other side of the street on the corner is a flat with a fruit store on the first floor.

Recross-examination:

One of the residences mentioned was built five years ago, another one about six years ago and the others have been there longer.

BELLE STEVENS, called by defendant-, testified:

That she lives at 415 South Ashland boulevard and has lived there for two years. That there is a bill board to the south which extends to within about one foot of her building and is under the elevated road. That the building she lives in is a flat building and she occupies the first floor. That her windows face the back
985 of this board and that people, mostly men, come behind the board at all times of the day and night and sit down under her windows. That papers filled with rotten stuff are thrown from above the space behind the board which is constantly used as a toilet. That there have been five dead dogs laying behind the board for the last three months and they have rotted away there. That the boards were raised up about two months ago so that any one could crawl under them. That the place has not been used quite as much since the board was raised. That the men going behind the boards constantly expose their persons. That this block is a residence block. That on one corner of the block is an apartment building with some stores on the first floor. That all the other buildings in that block are used as residences. That there are at least ten residences in the block.

Cross-examination:

There has been a board there for two years running north and south under the elevated tracks. That the men going behind the board also throw things in her lot. Men used to go in the barn at the back of her lot. There is an alley back of her lot. Some men came from the back, but more men come behind the board from the

street. There are two bathroom windows and two bedroom windows facing the lot back of the board. There is a board fence from the rear of the house to the back of my lot. The men going behind the board commit robberies on the lower floors. A robbery is committed at least once a year. This is reported to the police. I re-
986 ported this to the park policeman, who said that the courts would not uphold him in making an arrest as he had no jurisdiction. There have been three robberies under the elevated structure in the last year. It is dark there and men hide under the columns. Some of the men going behind the board make a farce of getting behind the posts of the elevated structure. The odor from the things back of the board is terrible. It comes from the dead animals and the other things. I reported this to the police who came and took away a dead cat.

Redirect examination:

In referring to the back yard I meant the part under the elevated. The stuff thrown behind the fence on my lot was on the side back of the sign board. On the opposite side of the street from me there is no sign board under the elevated structure and things similar to those under the structure back of the sign board on my side of the street are not under the elevated structure on the other side of the street. It is all clear there. The sign board comes just about to the corner of the building in which I live.

Recross-examination:

I have always taken notice of the space under the elevated in the block across the street and none of the conditions between the bill board and the alley are found there. There is a stable at the back of this alley and a barn.

987 HARRY C. THOMPSON, called by defendants, testified:

That he is a sanitary inspector for the health department of the City of Chicago and has been for two years and six months. That he has made inspections of surface bill boards located on private property in Chicago and made written reports of the conditions found about the same which are part of the official records of the department of health of the City of Chicago. That he made an inspection of the bill board at the southeast corner of Van Buren and Morgan streets, which board has a frontage of about ninety feet on the Van Buren street and eighty-five feet on Morgan street. That there was an entrance on the Van Buren street side at the east end of the board about a foot and a half wide. That he made the first inspection of that board on September 6, 1913, and found four deposits of human fecal matter behind the bill board near the opening on Van Buren street. That the purpose of his making inspections was to ascertain from the health standpoint the sanitary conditions around bill boards. That he made a second inspection of said board on March 28, 1914, but the same had prior to that time, been removed. I inspected the bill board on Sepember 6, 1913, located at 946-948 West Van Buren street which had a frontage of

about forty feet on Van Buren street and about thirty feet on an alley. At the time of that inspection no unsanitary conditions were found. I made another inspection March 12, 1914, and found behind the board, evidence of human fecal matter, one dead
988 cat and some garbage. I made no other inspection of that board. I inspected the bill board at 1671-1673 Ogden avenue on September 6, 1913, and found no unsanitary conditions there. I made no other inspection of that board. I inspected the bill board at 121-123 South Paulina street on September 6, 1913, and found no unsanitary conditions there. I inspected a bill board at 1666-84 Ogden avenue September 5, 1913, and found two deposits of human fecal matter in the corner behind the board. I made no other inspection of this board. I inspected the board at 312-314 South Paulina street September 6, 1913, and found evidence of urine on the ground behind the board, within five feet of same. I made one other inspection of that board on March 12, 1914, but found no unsanitary conditions at that time. There were fourteen buildings in that block, nine of which were residences. I inspected the board at 311-313 South Market street September 11, 1913. There is a passageway behind the board at the north end of same. The board is raised from nine inches to three and a quarter feet from the ground, the surface of the same being irregular. I found behind this board a large accumulation of papers and rubbish, the ground wet and the odor of urine very strong within fifteen feet behind the board. I made one other inspection of that board on March 12, 1914, and found one deposit of human fecal matter within fifteen feet behind the same. I inspected the board at 5 to 9 North Kedzie avenue on September 10, 1913, and found within twelve feet behind the same three deposits of human fecal matter, street sweepings and
989 horse manure; one pile of ashes and a considerable accumulation of papers and rubbish. I made one other inspection of that board on March 12, 1914, and found garbage, ashes and tin cans accumulated and thick weeds over three feet high behind the same. I inspected the board at 1624 to 1634 West Van Buren street on September 5, 1913. This board faces Van Buren street and Marshfield avenue and is open at both ends. The ground behind the same was covered with brick, mortar, paving stone, old broken wagons and burnt timbers. I inspected the board at 1722 West Lake street September 6, 1913, and found the same evidence of frequent urinating and very strong odors of urine immediately behind the board. I made no other inspection of this board. I inspected a board at 319 South Fifth avenue September 4, 1913, and found behind the board two deposits of human fecal matter and considerable evidence of urinating. I inspected the board at 1314 West Van Buren street, September 3, 1913, and found within five feet behind the board one deposit of human fecal matter and very strong odors of urine. I again inspected this board on March 12, 1914, and found a large quantity of ashes and refuse behind the same. I inspected the board at 1440-44 Van Buren street and found two deposits of human fecal matter immediately behind the board. I made another inspection of this board on March 12, 1914, and found four deposits of human fecal matter within five feet behind the board.

I inspected a board at 1719 West Washington boulevard September 6, 1913, and found four deposits of human excrement within five feet behind the board. In the block in which that board
990 was located there were fourteen buildings used for residence purposes and one building used as a hat factory. I inspected the board at 5421 South State street on September 12, 1913, and found about two dozen broken eggs within about five feet behind the board. I inspected the board at 471-479 Milwaukee avenue on September 9, 1913, and found back of the board tin cans, barrels, papers, bed springs, ashes, refuse, horse manure, garbage, broken glass and street sweepings. I inspected the board at 3202 West Chicago avenue, and found within five feet back of the board one large garbage barrel, four separate deposits of garbage and one deposit of human excrement. I inspected the board at 1602-1612 North Clark street on September 9, 1913, and found within five feet back of the board seven deposits of human fecal matter. There was also, back of the board, a large amount of papers, tin cans, refuse and rotten fruit. I inspected the board at 1724 Ogden avenue on September 5, 1913, and found two feet behind the board the body of a cat almost consumed by white maggots. The next day I found behind this board one deposit of human fecal matter made since the day before. On September 10, 1913, I inspected the board at 1710-30 South Clark street and found behind the same tin cans, refuse, old paper and old bottles. I reinspected this board on March 12, 1914, and found the same conditions prevailing. I inspected the board at 1710 West Van Buren street on September 5, 1913, and found within five feet behind the board one deposit of human fecal matter. I rein-
991 spected this board on March 12, 1914, and found the space behind the board was a general dump for ashes and tin cans. There was also at that time one deposit of human fecal matter. I inspected the board at 636 South Wabash avenue September 10, 1913, and found within five feet behind the board three deposits of human fecal matter and strong odors of urine. The bottom of this board was raised three and a half feet above the ground. I made another inspection of this board on March 12, 1914, and found right behind the board one deposit of human fecal matter. I inspected the board at 1800 Hubbard place September 10, 1913, and found behind the same rubbish, two bed springs and tin cans and saw one man urinating ten feet behind the bill board and about twenty feet east of the elevated railroad. I reinspected this board on March 12, 1914, and found much rubbish and evidences of frequent urination from the discoloration of the ground and the odors behind the board.

I inspected the board at 1133-39 South State street on September 10, 1913, and found within fifteen feet behind the board three deposits of human fecal matter, very strong odors of urine, old bottles, papers and rubbish. The bottom of this board is from two to four feet above the ground level. I reinspected this board on March 12, 1914, and found the same general conditions with the exception of deposits, but there were strong odors of urine at that time. I inspected the board at 2211-19 South State street on September 10, 1913, the bottom of which board is three and a half feet above the

level of the ground. Behind this board I found garbage,
992 old papers and refuse and one deposit of human fecal matter, strong urine odors and stains. I reinspected this board on March 12, 1914, and found the same conditions behind the same, there being at that time one fresh deposit of human fecal matter. I inspected the board at 2-8 West 26th street on September 10, 1913, the bottom of which is raised three and a half feet above the street level and found behind the board three deposits of human fecal matter, garbage and old papers. I reinspected this board on March 12, 1914, and found behind the same garbage and one deposit of human fecal matter. I inspected the board at 845 West Harrison street on September 11, 1914, the bottom of the same being raised three and a half feet above the ground and found behind the same three deposits of human fecal matter, a large accumulation of rubbish, broken glass, tin cans, bed springs, old shoes and garbage. I inspected the board at 5437 to 5454 State street September 5, 1913, the bottom of which was raised three and a half feet above the pavement and found immediately behind the same four deposits of human fecal matter, strong odors and many signs of urinating. I inspected the board at 420 South Kedzie avenue September 10, 1913, the bottom of which was raised three and a half feet above the ground and found immediately behind the same papers and tin cans. I inspected the board at 4436 South Kedzie avenue on September 10, 1913, the bottom of which was raised three and a half feet above the ground and found immediately behind the same old papers, refuse and half burnt garbage. I inspected the board
993 at 3543 to 3545 South State street, the bottom of which was raised three and a half feet above the ground and found immediately behind the same at the north end six deposits of human fecal matter and in the middle of the board, behind the same, three deposits of human fecal matter. I reinspected this board on March 12, but found no particular unsanitary conditions at that time. I inspected the board at 480 South State street December 12, 1914, the bottom of which was raised three and a half feet above the ground and found immediately behind the same garbage, and spittoon cleanings at the north end and refuse at the south end. I inspected the board at 417-19 South Ashland avenue on September 5, 1913, and found twelve deposits of human fecal matter within three feet behind the board and for a distance of about fifteen feet along the side of the house adjoining the board on the north. At this time the bottom of this board was level with the ground. I reinspected this board on March 12, 1914, at which time the bottom of the board was three feet above the ground and found three deposits of human fecal matter behind the same. In this block there were seventeen or more residences and on one corner were two stores with residences above. I inspected the board at 1721 West Lake street on September 26, 1913, and found from two to ten feet behind the board seven deposits of human fecal matter. I inspected the board at 735-39 North Western avenue on September 9, 1913, and found behind the same papers and tin cans and four deposits of human excrement. I inspected the board at 2015 Archer avenue

September 10, 1913, and found behind the same eight de-
994 posits of human fecal matter and a very strong urine odor. I inspected the board at 1719 West Madison street September 6, 1913, the bottom of which was raised three feet above the ground and found one deposit of human fecal matter immediately behind the same. I inspected the board at 802-4 Western avenue September 9, 1913, and found immediately behind the same three deposits of human excrement, bad odors, deposits of paper and tin cans. I reinspected this board on March 12, 1914, and found behind the same a large accumulation of paper and garbage. I inspected the board at 711-713 West 12th street, September 5, 1913, and found just behind the board one deposit of human fecal matter and strong odors of urine. I reinspected this board on March 12, 1914, and found behind the same three deposits of human fecal matter. I inspected a board at 1720 West Washington boulevard, September 6, 1913, and found immediately behind the same one deposit of human fecal matter. On the next day I noticed one new deposit of human excrement behind this board. On March 14, 1914, I reinspected this board, but found no deposits. In this block there were fourteen residences and one hat factory. I inspected a board at 2349-51 Jackson boulevard on March 12, 1914, and found immediately behind the same piles of refuse and tin cans. There were about thirty-five residences on both sides of the street in this block. This board contained the name of the Thomas Cusack Company at the top of the same and the bottom was raised about two feet above the sidewalk level. I inspected a board at 409
995 South 5th avenue September 11, 1913, and found behind the same a large accumulation of rubbish and evidences of frequent urination, the ground being damp and the board discolored. I reinspected this board March 12, 1914, and found similar conditions behind the same. I inspected the board at 1618-22 Ogden avenue on September 25, 1913, and found behind the same bad odors of urination. I inspected the board at 3139-47 Washington boulevard March 12, 1914. The ground behind the same was covered with weeds from three to five feet high. I inspected a board at 402 Washington boulevard September 6, 1913, and found behind the same a large quantity of ashes. I reinspected this board March 12, 1914, and found behind the same a large accumulation of refuse, ashes and tin cans. This board was owned by the Thomas Cusack Company. I inspected a board at 870-872 South State street on September 12, 1913, and found behind the same large quantities of old papers, refuse, garbage, etc. On March 12, 1914, I reinspected this board and found the same general conditions. I inspected a board at 2020-2030 Clark street on September 10, 1913, and found very nauseating conditions immediately behind the board, the bottom of which was raised three feet above the ground. I counted twenty deposits of human fecal matter behind the board. This space was also used as a dump for old papers, tin cans and refuse. I found the deposits back of the board along a stone wall of the railroad track, which was about seventy-five feet back of the board. I reinspected this board on March 12, 1914, and found a

large number of deposits of human fecal matter from forty
996 to sixty feet back of the board and from seven, to eight or ten deposits of human fecal matter in the rear from eight to ten feet back of the board and one dead puppy. This board is owned by the Thomas Cusack Company.

I inspected a board at 2548 South State street, September 10, 1913, the bottom of which was raised three and a half feet above the street level. Behind the same I found deposits of tin cans, papers, refuse and old bed springs. On March 12, 1914, I reinspected this board and found the same general conditions behind the same. This board was owned by the Thomas Cusack Company. I inspected a board at 1-7 South Kedzie avenue, September 10, 1913, the bottom of which was raised from three and a half to four feet above the ground. Behind this board I found one deposit of human fecal matter and a number of piles of papers, tin cans, half burnt garbage and meat bones. I reinspected this board on March 12, 1914, and found the same general conditions behind the same, one deposit of human fecal matter, one dead rat and weeds about three feet high. The board is owned by the Thomas Cusack Company. I inspected a board at 350-360 East 63rd street on September 12, 1913, the bottom of which was raised three and a half feet above the ground, and found immediately behind the same a quantity of garbage, old papers and refuse. This board is owned by the Thomas Cusack Company. I inspected a board at 411 South Kedzie avenue September 10, 1913, the bottom of which is raised three and a half feet above the street level, and found fifteen feet back of the same
997 a large pile of garbage covered with flies and two open garbage cans, empty. This board was owned by the Thomas Cusack Company. I inspected the board at 3157-59 Ogden avenue on September 10, 1913, the bottom of which was raised three and a half feet above the ground. Behind the same was a large amount of old paper, tin cans and refuse. I inspected a board at 40-42 North Larrabee avenue on September 4, 1913, the bottom of which was raised three and a half feet. No unsanitary conditions were visible at that time. I inspected a board at 420 South Laflin street, September 25th, and found no unsanitary conditions. All the boards concerning which I have testified are surface bill boards elevated from the ground by posts.

Cross-examination:

The inspections just referred to are the only ones I have made. I was directed to make them by Mr. Ball, chief sanitary inspector. I was not told what boards to inspect. The boards inspected were chosen for the purpose of obtaining a general view of bill boards in various sections in Chicago. I think these boards represent a fair average. I inspected the boards along Washington boulevard going its entire length. Six miles from Clinton to Oak Park. I inspected the board at 3139 Washington boulevard in March, 1914, and found behind it weeds holding old papers covering the entire space immediately behind the bill board. I did not find any weeds in front of the boards at 902 Washington boulevard. The other board on Wash-

ington boulevard which I inspected was under the elevated railroad near Paulina street. I did not find other refuse near the
998 elevated structure, nor look for it, as I was examining the conditions behind bill boards, which was the only purpose of my inspections.

I did not go out for the purpose of ascertaining whether conditions were worse behind bill boards than behind sheds, houses or other structures. I cannot state whether there is an alley behind this board. The board at 902 is not under an elevated structure.

I do not know what cross street the board at 902 is near. The space on both sides of this board is occupied as residences. Halsted street is a business district. I have not seen anyone dumping ashes and refuse on vacant lots. The ashes behind the bill board at 902 Washington boulevard were at least one hundred and fifty feet from the alley and were behind the board. I did not look at the rear of the lot to see whether or not any refuse was there. I did not make any inspection of alleys.

Mr. Hummer: Did the official who sent you out tell you that this testimony was wanted for the purpose of this suit?

Mr. Hoover: I object.

The Court: He may answer.

Mr. Hoover: Exception.

Witness: He said there was a suit in connection with the bill boards.

Mr. Hummer: Did he tell you he wanted you to find the worst conditions you could find?

Witness: He did not.

999 I did not go out to Sheridan road, as I had no automobile, but I noted conditions from the street cars. I did not go out on Grand boulevard, as there is no street car there. Bill boards on South Ashland avenue are also in residence districts and I inspected two there. There are more bill boards than that number on Ashland avenue. I examined twenty bill boards in that vicinity concerning which I have already testified. I was not told to pick out boards under elevated structures, but happened to see them while in that vicinity. I was not instructed as to on what streets inspections were to be made.

I had no instructions as to the character of evidence that was wanted. I did not consult any of the lawyers in the law department and no investigators made any suggestions to me. I did not discuss this matter with any one before making the inspections. I examined other things than bill boards in other work, but have not examined alleys or the rights of way of the elevated roads. During the first three months of my work with the sanitary bureau I was inspector of privies in outside districts, then for a month I worked in the ghetto inspecting conditions caused by the freezing of water pipes during a severe winter and for the past two years and three months my work has been entirely in connection with street cars and steamboats. I was taken off my regular work to make these

inspections. I examined the board under the elevated on Washington boulevard on March 6th and March 12th, and went back of the board for a block. I did not notice the same odors around the pillars, or the iron posts of the elevated structure there. You
1000 are apt to find such odors at such posts near the street, as people enter from the street as a rule. I found deposits there near the pillars, which also serve as a protection. All the deposits found there were behind bill boards and pillars. I went a block back of this board under the elevated and found refuse only behind the boards. Of course there was some refuse on vacant lots. This board was raised one foot above the pavement. There was no opening in front of the board and I came to it from the rear. Immediately back of the board papers were spread on the ground and there were signs of people having slept there. At this place people would have to come from the rear unless they crawled under the board. Men would have to travel a considerable distance to get behind this board.

I do not know whether there were any stables, barns or garages along the alley on either side, as I was inspecting bill boards. I can't say whether or not there was the same refuse in alleys. The board at 1720, I think, was open at both ends and the first time I inspected it I found one deposit of human fecal matter behind it, and a new deposit the next day. When I inspected it on March 12th of this year I found nothing unsanitary behind it. It was under the elevated and I went about fifteen feet back of the board. There is a hat factory on the street, but all the other buildings were fine looking residences. I did not see evidence of a transition into manufacturing property. I did not go into any of the residences. I do not know what was being done inside of the residences, but there were no signs of shops there. I did not see very many bill boards
1001 on Washington boulevard. The bill boards I did not inspect were raised high from the ground and did not appear, as I was passing, to shield unsanitary conditions. The boards concerning which I have testified do not include all the bill boards in Chicago, that I saw, but all that I made a careful examination of. Some of the boards I did not inspect, as they were far from any residences. East of Kedzie avenue I found very few bill boards that were not near some building. The ones I did not make reports on I did not inspect. I did not want to find bad bill boards, but was inspecting as to unsanitary conditions. I turned in the reports of my inspections to Mr. Ball, who directed me to have them filed with the records of the department. They were not submitted to the police and I did not report these conditions to the police. I do not know whether anyone in my department reported these conditions to the police. I did not know what the purpose of my inspection was, but suppose now they were intended for use in this lawsuit. I do not now remember of meeting any policemen on my inspections. Van Buren and Morgan street is not an especially dirty part of Chicago.

Van Buren street is a business street and at its intersection with Morgan is partly a business section. The new buildings there are big manufacturing buildings. I do not know whether the lots all around

that locality are covered with debris and rubbish. I do not remember what I saw there except with reference to the sanitary standpoint. I can't tell what the rear of that lot was used for. As a rule I inspected only fifteen feet back of the boards. I can not
1002 say now what I saw further than fifteen feet back of that bill board, but I could as to some; that is, the two on Kedzie avenue and Madison, 509 Kedzie avenue is a residence district. There are street cars on Madison and Kedzie, but residences are all around there. On Madison street in the block east and west of Kedzie I think are only business places. On the northwest corner is a Chinease restaurant, on the southwest corner a drug store, on the southeast corner a vacant lot, and then residences. Bill boards are on this vacant lot. On the other corner is a vacant lot and then residences. On Kedzie avenue are residences, but on Madison not. Back of the board on the corner was about a bushel of popcorn put there by the man who popped it. I saw the man do it and told him not to do it again. I did not see any there on my second inspection, but found street sweepings there There were three piles, about two or three bushels of street sweepings there. I do not know who is in charge of sweeping the streets in this locality. I did not report this to the street department. There was one pile of ashes behind this board, probably a barrel or two. On my second inspection the weeds were three feet high in the rear of the board, covering all of the space behind it. That condition does not exist on all the vacant lots along Madison street that don't form part of some lot adjacent to a house. There are vacant lots with plenty of weeds, too many. I do not know who deposits the tin cans. I have seen tin cans on vacant lots without bill boards on them.

In making my inspections I did not notice a lot of vacant
1003 lots without bill boards thereon used as dumping grounds. Conditions are worse on lots with bill boards on than vacant lots in respect to the accumulation of refuse and fecal matter. As to tin cans the general tendency is to deposit such things behind a bill board, rather than in vacant lots or behind fences, which as a general rule enclose the entire lot. Where the fences do not inclose the entire lot it is still more difficult to get access to them.

Mr. Hummer: What is there on a bill board on a vacant lot that attracts a person with a wagon full of tin cans going through an alley?

Witness: It seems to appeal to human nature and a desire to hide things. I found larger accumulations behind bill boards on vacant lots than on such lots without bill boards. I did not look at the vacant lots on Van Buren street east of Ashland which were below the level of the sidewalk. As to general conditions there is a tendency to pile accumulations behind bill boards rather than in vacant lots. I have never been along the alleys east and west of South State street, nor along the alleys east and west of Clark street. Nine hundred forty-six to forty-eight West Van Buren street is not a high class residence district. In going behind this board I went through the alley, but did not notice anything there. In September inspection there were no unsanitary conditions there. In the March

inspection of this year there were deposits of fecal matter, but I did not count the number. The deposits were not in the alley, but behind the bill board. I did not report the deposits of garbage to the garbage or police departments. I went thirty feet up the alley to get behind the bill board and inspected the alley there,
1004 but did not find any odors. The bill board at 1666-84 Ogden avenue extends from the alley south to Adams street, on the east side of Ogden and thirty feet on the north side of Adams. This is a business and residence district. I did not count the number of buildings at any place on my first inspection. The two deposits of fecal matter were not in the alley, but were at the corner behind the boards where the two boards came together.

Three hundred twelve to fourteen South Paulina street is not a business district, there are residences on both sides of that board, but I do not know how many.

Three hundred eleven to thirteen South Market street is a manufacturing district. I inspected about twenty feet behind that board. It is under the elevated. There is quite a hole behind the board. I did not see street sweepings there.

That board is in the down town district. There was old building material behind that board and manufacturing buildings in that vicinity. The board hides a disagreeable view, but were it removed the conditions might be cleaned up. Sixteen thirty-four to forty-four West Van Buren street is near Marshfield. The board is just east of Marshfield on Van Buren street. I think nearly all the buildings from Marshfield to the first street east on Van Buren are residences. There may be stores on the first floor of some of the residences and there are stores on the corners with flats above. I do not think business buildings predominate in that block.
1005 In the back part of the lot there is a general storage yard.

Seventeen hundred twenty-two West Lake street is also under the elevated, and is in a rather cheap district. The elevated road has a station there. Three hundred nineteen South Fifth avenue is in the wholesale business district of Chicago. The bill board is on a lot north of an engine house. There is a hand ball court used daily there by the firemen. Boys have built a structure on the supports of the bill board and play behind it. I do not know what north and south street 1413 West Van Buren street is near. I made a second inspection of this board, but did not count the structures. I can not say whether this is a business neighborhood. It is on a street car line. 5421 South State street, as I recall it, is a business district.

I do not know who put the eggs in back of the board that I found there. There were old cellars at 471-9 Milwaukee avenue, which extend behind the bill board and are immediately behind it. I did not report to the street department of the street sweepings found behind this board. There were three old broken wagons behind the board, but nothing useful there. This is a business district.

From 3202-12 West Chicago avenue is more vacant property than anything else. The improvements are business buildings. The ashes and garbage behind this board did not appear to have been

dumped by the city. There is a building immediately east of this board and the pile of ashes are up against it. They could not have been thrown out of the building. There is considerable dumping on vacant lots by people owning property next door instead
1006 of dumping on their own. The board at 1602-12 North Clark street is at the corner of North avenue. North of there are residences and east is Lincoln park. North avenue is a business street at that point. The corner of Clark and North avenue is a transfer corner. There is no opening of the board on North avenue. This board faces Clark street and North avenue, but is at least forty feet from North avenue. On the southwest corner is a saloon and there is a fruit stand on the northwest corner. I told the man who ran the fruit store not to throw rotten fruit behind the board, but the health department has no authority to do that. The garbage behind the board was close to the fruit store. The accumulations were just behind the board within fifteen feet of it; back of that were thick weeds. I went behind the board over a path within three feet of it and spent about fifteen minutes there. There were wagon tracks on the vacant lot in the middle of it which I think went out on LaSalle street.

There were houses immediately north of the bill board. The board at 1724 Ogden avenue is under the elevated structure and is in a business district. I could not tell whether the cat had been thrown there, or died there. On the east side of the street are a number of dilapidated buildings. The board to some extent hides the view of the condition back of it. Street cars run in front of the board. I did not look on the lot which was not covered by the bill board.

1710 West Van Buren street is under the elevated road.
1007 The bottom of the board is three feet above the sidewalk and two feet above the ground level in the rear. The ground is irregular. In September I found one deposit of human fecal matter behind the board and in March another deposit. The ashes and cans were immediately behind the board. The accumulation of same was small. I did not think there was anything very unusual about it. There is a large, extensive, low building on the corner and it is generally a business district.

I live at 3417 Walnut street. The bill board at 636-8 South Wabash avenue is on the west side of the street in a business district about four hundred feet from the elevated, which runs west of the lot. The board at 18 Hubbard place is at that corner. I did not look at the space under the elevated. The first time I went there I came in around the west end of the board and the second time I went under the board from Wabash avenue. The board closes up the entire street front at that corner.

Mr. Hummer: I think the court will take judicial notice of the alleys under the elevated.

The Court: As far as the court is concerned I know all about it.

The rear of these lots face the rear of the buildings on South State street. I noticed a man at this point urinating behind the bill

board. I did not note how far behind the board the bed springs were.

I did not notify the police that this man had committed a nuisance. I did not see any police there. I do not know how wide the lot is, the bill board is about seventy-five feet long. I think
1008 the lot backs up under the elevated which runs around the rear of it. My recollection is that the view behind this board is ugly. I inspected a distance of twenty feet behind the board. South State street near 12th is not an attractive district. My general impression is that there are saloons, lodging houses and business of that character there.

From the inspector's standpoint a residence district is wherever people live. The lot at 2211 South State street abuts on the elevated structure, which is about five hundred feet back of it. I am poor at judging distances and did not measure it, but think it was more than a hundred and twenty-five feet from the board to the elevated.

I do not know whether the elevated structure is over an alley. I do not know what business was carried on around 2211 South State street. I entered the back of this board from State street. I think the surroundings there are unattractive and the view is, to some extent, shut off by the bill board. The first floors of the buildings at 22nd and State street are used for business and people live above them. Two to eight West 26th street is immediately west of State street. There is a small building on the corner, but I do not know its use. There is a large open space behind the bill board. People come behind the bill board from State street and dump on the lot. I do not know whether this is a business district. Some people live there. I think there is a little house west of the alley on 26th street. I did not notice the character of the buildings adjacent to this
1009 lot on State street. I have heard this is a red light district.

Along State street at that point are small business places. There are surface lines on 22nd street and on State street. 845 West Harrison street is between Halsted and the street west of Halsted and is a cheap business district. I do not know whether there is an alley west of the lot. I went under that board to get behind it. I do not know how deep the lot is. I inspected twenty feet back of the board. 5427-35 South State street is on the east side of the street facing west and most of the lots there are vacant with very little business. The first floors of the structures there are used for business. I did not look at the vacant lots. 420 South Kedzie avenue is on the west side of the street facing east. The car barns are on the same side of the street. This board is south of Van Buren street, I think. The lower floors of the buildings there are used for business purposes.

The car barns house three hundred cars and fifty men are working there day and night. 436 is in the same block. 3333-43 South State street is in a district in which there are some business houses. 35th and State streets is a transfer corner. At the rear of the lot on which the board is located is the elevated structure There is an alley behind this lot.

At the last inspection of this board nothing unsanitary was found.

There is a saloon north of 4018 South State street. This lot faces east. I entered behind the board from the sidewalk. When
1010 I inspected the board at 417 to 419 South Ashland avenue under the elevated on September 5th, I found twelve deposits of human fecal matter around the board, but did not note in around the elevated structure.

That board is about eight feet back from the sidewalk. The bottom of it is raised about three feet above the ground. I did not see any dead cats or dogs there. I went about thirty feet back of that board and noticed a fence on one side. I did not look behind the fence. I found nothing unsanitary except immediately behind the board within thirty or forty feet of it. I found no dead animals back of the board near the alley.

The ground is level in front and behind this board and some ashes are strewn over it to make it level. I did not inspect other parts of this neighborhood.

I did not see any bundles strewn along the ground behind the board. The structures near 1721 West Lake street are old buildings occupied by cheap stores. This board is under the Metropolitan elevated on the south side of State street. This board is at the present time replaced by a station. I am not familiar with the locality at 735 to 739 North Western avenue. I remember one saloon on the northeast corner near there. There are a number of vacant lots there which I did not examine. I am not familiar with the locality at 2015 Archer avenue. This board is on the west side of Clark street, south of Archer. The railroad crosses the lot on the west side and on the east side of the street are buildings. I think this is known as the red light and railroad district. On Archer avenue are coal offices. 1719 West Madison street is under the ele-
1011 vated structure. I only examined the space immediately behind this board and did not examine around the posts. I went behind this board at one end. I think there is an elevated station on the north side of the street. On the lower floors of the buildings in this neighborhood are stores. I think there is an alley in the rear of this bill board. I think the supports of the elevated are about ten feet behind the bill board. I am not familiar with this locality.

It is near the intersection of Western and Chicago avenue at the northwest corner. My recollection is there is a large number of vacant lots there. The buildings are used as stores on the lower floors as I remember. There is a fruit store on the corner and the board is immediately north of it. 711 to 713 West 12th street is under the elevated structure. It is on the south side of the street. I did not examine around the pillars of the elevated road. There is a space of over three feet between the pillars of the elevated road and back of the board. I am not familiar with that locality. There is a street car line coming from the north on Paulina and turning east on 12th street. The buildings in the immediate vicinity are used as stores on the first floor and flats above. There are several saloons there, particularly on the corners near the elevated. 2349-51 Jackson boulevard is on the south side of Jackson near Western avenue, on

the corner. I do not know whether an alley is immediately south of this lot.

1012 Mrs. JULIA B. RACKCLIFFE, called by defendants, testified:

That she lives at 813 East 47th place, Chicago, and has lived there, with the exception of two years, for nineteen years. That she lives on the south side of the street and that adjoining her home on the west is a vacant lot with a bill board on it which has been there about six months. That prior to the present bill board there had been a board on this lot for about ten or eleven years. That since she has lived there there has been lots of trouble on account of the board. That people have tried to use the lot as a dumping place. That her windows face the lot behind the board. That her sister and herself live alone in the house and have been afraid to go out afternoons on account of men lurking behind the bill board. That on that side of the house burglars had attempted three times to enter it. That the bill board incloses the lot on Cottage Grove and 47th place. That one Sunday afternoon there were three men back of the bill board dressing up a man, putting a shirt on him. That the police were called and came, but the men had left before their arrival. That she had seen the space behind the board used as a toilet every day. That there are twenty-eight buildings on both sides of 47th place east of Cottage Grove avenue. That 47th place does not run east to an intersecting north and south street, but ends before reaching such a street. That all these buildings are used exclusively as residences.

1013 Cross-examination:

I do not know how far my house is from Cottage Grove, but it is the first house and the lot between is quite large. There is an alley called boulevard alley just west of my house which separates the lot upon which is the bill board. People could not see any one trying to get in the side of my house nearest the bill boards in going north on Cottage Grove, but could see them going south on Cottage Grove. The police patrolling 47th street could see burglars at the alley side of my house. I think the alley is fourteen feet wide and the bill board about fifteen feet beyond that.

One evening a man went into the back room window upstairs which faces south. He could have gone through the alley into the back yard to do so. One morning I went downstairs and the dining-room window facing west was propped up and my bag had been taken. There is also an alley in the rear of my house and any one coming into it would have to come in from the west. One afternoon when no one was at home the house was entered from the kitchen window at the south end of the house on the alley. One day an old wagon with garbage drove up the alley and unhitched there, that is, in the lot behind the board. They stopped in the corner behind the bill boards as close to them as they could get. About two years ago I complained to the police about the wagons with garbage driving in there and after that the lot was clear.

One day a colored man dumped a lot of sand on the best part of the grass behind the boards and went away before I could
1014 tell him to get off. We had been planting grass seed there to keep the place clean. The men who went behind the board for personal purposes came behind from the corner of 47th and Cottage Grove. They came right around the end of the bill board. Some of them were teamsters and would stop on Cottage Grove or on 47th place. The lot back of the board was also used for playing ball and my windows were often broken. The bank controlling the property allowed me to take charge of the lot about four or five years ago. The vacant lot across the street is also planted with grass and we have an association which makes assessments to hire a man to cut the grass. This board is illuminated at night, but the lights do not illuminate the back of the board. The place is lighted by an arc light on the corner.

Redirect examination:

The board there now has on it an advertisement of the People's Gas Light & Coke Company, but I do not know who owns it.

HARRY C. THOMPSON, called by defendants resumed the stand for further cross-examination and testified:

That the name Thomas Cusack Company was on the top of the board at 2349 Jackson boulevard. That that name was not on the top of all the boards concerning which I testified, but I did not specify all the boards that had that name on the top. Some of the boards had other names on and some had no names on. 409 South 5th avenue is just south of Van Buren street and
1015 there is a general wholesale district west of there.

The lot back of this board had been excavated and there was a depression of about seven feet.

I have not examined the board at 1618-22 Ogden avenue since September, 1913, at which time behind the same there were bad odors. 870-72 South State street is not a residence district. The business there would be low class saloons and places of that character. The lot faces east. I confined my inspections to the conditions around the bill board and do not remember the kinds of buildings near it. 2020 South Clark street is bounded on the west by the railroad wall and on the east by a bill board. North of the bill board is Archer avenue, but I do not know what is south of the board. On my second inspection of this locality in March, 1914, I observed that across the street were two frame cottages and three flat buildings with three flats in each building. These buildings were tenements and appeared to be old from the outside. Two had stores on the first floor which were vacant.

The lot upon which the bill board is placed runs to the railroad right of way. I looked all the way from the back of the bill board to the railroad right of way. All of this was in very bad condition. The space along the railroad right of way was used as a depositing place by men continually. The place back of the board was a dump for refuse, tin cans and old papers.

I think there is a board fence or enclosure on the south side
1016 of this lot. Along the fence on the side towards the back of the bill board the conditions are the same as along the railroad wall. The north side of the lot is nearly all enclosed by bill boards as is all of the east side of the lot. This district is a business and railroad district.

2548 South State street is of a similar character as that just testified to. The lot faces east on the west side of the street. I did not go to the rear of this lot. One to seven South Kedzie is on the southeast corner of Kedzie and Madison streets. Madison street is a business district, but Kedzie has a great many dwellings and I think south of this board are residences exclusively. I do not remember the number of residences there on the east side of the street south of the bill board, nor on the west side. The corner is a transfer corner and there is theatre and saloon on the corners. The front of the board was clean. The board extended about two hundred and thirty feet diagonally across the corner. I found there one deposit on the first inspection and one on the second six months later. 350 to 360 East 63rd street is at the northwest corner of South Park avenue opposite White City and I found behind the board quantities of garbage, old papers and refuse. I do not know what buildings are on these streets. I remember a building at the back of the lot on which the bill board was, but do not know what it was used for. The board faces 63rd street towards the south and White City. 411 South Kedzie is near Van Buren street. On both sides of the street here are small business houses and barns on the opposite side of the street.

1017 3157-9 Ogden avenue is a locality with which I am not familiar. I inspected the space immediately behind this bill board. I do not know whether this is a business district. 40-42 North Laramie is the same as 52nd avenue. It is at the head of Washington boulevard where it turns. There is a good deal of vacant property there which I did not inspect. I found lots of grass and weeds on this lot. 420 South Laflin street is just off of Van Buren adjoining the elevated station. I found no unsanitary conditions there. I made no reports to any one other than my own department.

After making the first inspections in September I talked to the first attorney that had this case and he looked at my cards. I did not talk to him before making the inspections. The cards from which I have testified are the only ones made up by me. The boards I saw concerning which I made no reports I made no inspection of. I was to report unsanitary conditions if they existed. The reports on boards at which sanitary conditions were found were not made simply to make the appearance of fairness, but I made a report for every place I inspected because a record is kept of the number of our inspections.

JOHN L. DYKES, called by the defendants testified:

That he lives at 434 Roscoe street, Chicago, and has lived there for two and a half years. There is a bill board near my home on Sheridan road and at the corner of Roscoe and Broadway. The board on Sheridan road is on a lot with underbrushes and trees in the

corner. I noticed in walking across the lot evidences of
1018 nuisances back of the board, between it and my residence.
The bottom of the board is probably six feet above the ground which is depressed below the sidewalk level. I go through behind the board at Wilson and Broadway every day in going to my garage and today there is evidences there of nuisances, that is, evidence of human fecal matter which was behind the board. About a year ago the metal face of the board was torn off and thrown across Sheridan road.

Cross-examination:

I am in the manufacturing business. There are two lots between the bill board on Sheridan road and my home which are vacant. One faces on Roscoe and is a fifty foot lot and the other faces Sheridan road and is one hundred and forty to one hundred and fifty feet deep. My house faces south on Roscoe and the board faces east, running along Sheridan road. There are trees and shrubbery on the corner of Roscoe and Sheridan road. I did not examine around the trees and shrubbery, but merely noted what I have testified to in walking through the lot. I do not own this property and there is no path there, but I walk through the lot there with my dog. I exercise the dog in the vacant lots occasionally and it commits nuisances there at times. I was called in this case by the prosecution.

Last year an automobile in making the turn at Roscoe and Broadway skidded and plunged into the bill board, hitting one of its supports and had it not happened to hit the support it would have gone through the board and taken off the heads of those riding in the car.
The bottom of the bill board was about three to five feet
1019 above the ground. I have not taken any special interest in trying to have bill boards done away with. I wrote two articles in regard to bill boards for the Tribune. The corporation counsel's office called me up and asked me if I would testify and I said I would. I did not examine any other boards. The first communication with the city was about a year ago, but it was not suggested to me that I make an examination of bill boards. I did not notify the police of the deposits I found behind the bill board. There are vacant lots on Sheridan road, but I only know as to the lots over which I travel. I go across the lot at the corner of Roscoe and Broadway daily. At the corner of Roscoe and Sheridan road, I may be in this week or next week. There is no alley between my house and the bill board, nor back of my property. Mr. Dorsey, in the rear of me, has a garage with a driveway from the front. On the east side of Sheridan road at this point is the park, which is lately made ground. I did not notice any cans or rubbish there. I have seen a great number of vacant lots without bill boards on them in Chicago. Some of them are littered with rubbish and cans. At the time I saw the nuisances behind the bill board on Sheridan road there were men working on the made land east of Sheridan road. About fifty or one hundred. They have been working there off and on for the last two years. I never saw any of them commit nuisances behind that board. Along Sheridan road at this point the lots on

which bill boards are located are clean by themselves, not by any one keeping them clean. The vacant lots are clean there.

1020 H. LEIBOVITZ, called by defendants, testified:

That he lives at 1615 West Van Buren street, Chicago, and has lived there one year and a quarter. That there is a bill board at the corner of Marshfield and Van Buren. I rented one of my flats upstairs to two couples. New fellows came in there every-day. I stopped the fellows coming in my apartment and after that they started to go behind that bill board. Girls with fellows went behind the bill board from seven o'clock until ten or eleven in the evening nearly every day. Behind this board were doors and wagons and woods and all kinds of lumber.

Cross-examination:

One of these girls lived in my flat, but I made them move. I followed them behind the bill board one time in August. I saw girls going with fellows behind the board many times. There are sort of benches behind the board, wagons and lumber. There are about five or six lots and the wagons and lumber cover all of it. The bill board encloses all of the lots. The name American Posting Company is on it. There is a little fence on the alley side of the lot with gates in it. They go behind the board from the sidewalk, not under it. The ground is level with the sidewalk. There is a fence in the alley part way, but it does not go to the bill board. The benches are of doors and wood. I followed the girl and man behind the door and they made a bench from boards. The doors and wagons are all over back of the bill board. I saw the fellow and girl go
1021 behind and sit on the boards and do wrong. I stayed there about five minutes. I saw them one time. I reported to the police and made them move.

I see other people going behind the board now, but have not watched to see what they do. I do not know who owns the lots, but I think he has a teaming company that brings lumber there sometimes. He did bring some material in and out there, but not now.

Redirect examination:

The fence on the allay starts about ten or twelve feet back of the board.

Recross-examination:

I saw the people going in there and come out in about half an hour or an hour.

HARRY C. THOMPSON, called by defendants, resumed the stand for further cross-examination and testified:

That he talked to Mr. Hoover before making his second inspections. That Mr. Hoover went with him when he made some of the second inspections, but no other inspector was along.

Redirect examination:

The buildings near 870 South State street are cheap lodging houses. The fence at the south end of the lot at 2030 South Clark street extended from the south end of the bill board to the railroad right of way, there being no opening between the bill board
1022 and the fence except under the bill board. Buildings on the opposite side of the street appeared to have been used as there were curtains on the windows.

CHARLES FOX, called by defendants, testified:

That he lives at 5431 Cottage Grove avenue and has resided there four years. That he has seen men go behind the bill boards near his residence and commit nuisances behind them. The bill board is south of my house on the east side of Cottage Grove and bears the name Thomas Cusack. It has been there ever since I have lived there. I have also seen a man and woman come out from behind the board at night on my way home.

Cross-examination:

The lot upon which the bill board is located is vacant. There is an alley away behind the bill board on the back end of the lot. The bill board is just across from Washington Park. My house is about one hundred and fifty feet from the car barns. I have not seen people passing from the east through the vacant lot to Cottage Grove. I have seen people passing at night through the passage of about two feet between the bill board and my house. I come home from work at eleven o'clock p. m., for two weeks, then at seven in the morning for two weeks. There is no amusement park or saloons in that neighborhood that I know of. I have seen a man go behind this board and use a newspaper to wrap up
1023 his person. I do not know where the man is stopping, but would see him from the table where my wife and I have dinner. This board has recently been raised from the ground about three feet. That is about two weeks ago. It comes up right against my house now. This board covers all the vacant lot.

Redirect examination:

The old board was taken down and a new one put in its place. The panel of the board next to my house is but the frame work of the board.

Recross-examination:

I have not seen the man who went behind the board since last summer. I saw people commit nuisances behind the board almost daily. I have seen them before and since the new board was put up. Since the new board has been put up the men stand about *about* ten or fifteen feet behind it against the buildings at either end.

B. F. BECRAFT called by defendants, testified:

That he has lived at 3961 Drexel boulevard, Chicago, since last July. That there is a bill board covering the vacant lot north of his home which bears the name Thomas Cusack. This board is quite long and has space for eight or ten advertisements. At different times I have seen men behind this board up against it committing nuisances. I have seen this two or three times a week. I never stayed around to see how often I could see it, but have seen it often.

1024 Cross-examination.

I never reported what I saw to the police. The board is next south to a studio on Drexel boulevard. At 39th and Cottage Grove there is Baldwon's Drexel, Mankow saloon, Drexel Cafe, and an American and Chinese restaurant and on Cottage Grove the LaSalle grocery. That is a business district. The block in which this board is located is a rooming house district, that is, most of the people in the houses along there have roomers. Next to the studio on the corner is a real estate office. One man I saw crawled under the board from the street. He did not appear drunk. I saw many other men go behind the board. In one day I saw three men who came from Cottage Grove avenue where the street railway was fixing its tracks. They came from across the street to the board. I have never seen any one come from behind the board from the alley. I saw the people behind the board from my house. There are no fences on that lot, but I think one or two garages on the alley which is back of the lot. Mr. Hoover and another gentleman came to my home and asked if I had seen any nuisances committed behind the board and I said "Yes." I was subpœnæd as a witness. Before living at this place I lived in Michigan. This is the only place I have lived except in Michigan. The alley behind the lot runs from 40th to the back of this vacant lot and there ends.

1025 Dr. ALFRED WEBER, called by defendants, testified:

That he lives at 2756 Belmont avenue and has lived there thirteen or fourteen years. I live on the north side of the street. A bill board is just west of my house. It has been there about two years and bears the name Thomas Cusack Company.

Photograph of bill board offered and received in evidence and marked defendant's Exhibit one 4/8/14.

I am a doctor and have my office here and the windows face behind the board. Men come behind the board several times a day committing nuisances who are seen by myself and my patients, some of whom are ladies. With the exception of a vacant building on the corner all of the buildings in this block are residences.

Crsos-examination:

On the corner of Belmont avenue and California avenue is a saloon. This is about two blocks east of the river and is about two

blocks from Riverview Park. It is about four blocks from Western avenue. There is a grocery store east of the saloon and a laundry. I live between California and Melrose. There is a residence at the corner of Melrose. No saloon on both sides of the street. There is an alley back of my lot. My house is between California and Washtenaw, California being west and Washtenaw east. I have lived in this place fourteen years. I never reported the men going behind the board to the police. The nearest police station is about eight or ten blocks.

1026 JOHANNA FISCHER, called by defendants, testified:

That she lives at 2756 Belmont avenue, Chicago, and has lived there for nine years. That there is a bill board in front of the vacant lot adjoining her house. That a great many men go behind the board and commit nuisances there. That her bedroom window faces the back of the board. That the condition there is very bad in the summer time and is used more in the summer time than in the winter. That the name Thomas Cusack Company is on the board.

Cross-examination:

On the corner of California and Belmont is a frame house, then comes a vacant lot, the front of which is covered by the sign board. People go around both ends of the board and commit nuisances behind it. On the other side of my house is another house. People also go up beside the house on the corner back of the board. That corner is a transfer corner and a great many people get off there. There is a saloon on the other corner. The cars have stopped at that corner as long as I have lived there.

F. W. BEAVER, called by complainant, resumed the stand for further cross-examination and testified:

That one of the fourteen boards mentioned is at the northeast corner of 40th street and Grand boulevard. That complainant has a board at the southeast corner of Grand boulevard and Oak-
1027 wood, but that Oakwood and 40th are not the same streets. This board was erected in about 1890 and is in the same block as the board at the corner of Grand and 40th. It is raised 18 inches to two feet above the ground. The board at 2909 Michigan avenue which was erected since the passage of the ordinance requiring frontage consents is raised three and a half feet above the street grade, but in some places only two feet above the level of the lot. It might be raised above the level of the lot but one foot in some places. The top of the board at the northeast corner of Washington boulevard is fifteen and a half feet above the street grade. The board at 816-24 South Ashland boulevard can be reached from the front or back of the lot. There is no fence enclosing this lot. On the lot is a sign "no trespassing allowed." The board at 2758 Belmont avenue was erected by the Cusack Company the early part of the year 1912 and no frontage consents were filed. The board at 5433 Cottage Grove avenue was erected about six weeks ago and no frontage consents were filed. The board at 3139-47 Washington boulevard

was erected about eight to ten years ago and is in a residence block. The board at the corner of 40th and Irving Park was erected within the last eighteen months and faces both streets. The board at 3443 Michigan avenue was erected before the World's Fair. It is a residence block within the terms of the ordinance and was moved around under permit during the last six months. No frontage consents were filed at the time the board was moved. The board at 2504 Michigan
avenue was erected before the World's Fair in 1893. We got
1028 a permit to alter this board about six months ago. There are
a number of fine residences in this block. The bottom of this board is between eighteen to twenty inches above the level of the ground. The board at the southeast corner of 35th and Grand boulevard was erected in 1893 and the 35th street side of the board was rebuilt within the last year. We call rebuilding the board when we change the position and size of the boards. Grand boulevard at this point is a residence block within the terms of the ordinance. The bottom of the board is about two feet above the grade of the lot. Part of the board at the northeast corner of South Park avenue and 35th street was erected about a year ago and part of it has been there for about fifteen years. Part of the new board is a double deck board and the board was moved diagonally across the corner within the last year. I do not know the exact number of buildings in that block on South Park. The board at 2721 Michigan avenue was erected in about 1893. There may have been new boards put in there since then, that is, the braces may have been changed. It is a residence block. The bottom of it is about a foot or fifteen inches above the level of the ground. The board at 5028 Grand boulevard has been there fifteen or eighteen years. The face of the board may have been changed and new braces put in, but that is all. It is in a residence block. The bottom of it is about a foot above the level of the ground. The board at 3947 Drexel boulevard was erected about twenty years ago and the only change in it since the passage
of the frontage consent ordinance was a change of its face.
1029 No permission was obtained to make this change. One of
the buildings in this block is used as a boarding house. I do not know what the other buildings there are used for. The board at 4300 Drexel boulevard was erected ten or twelve years ago and no changes have been made on it except the face. No changes in the braces have been made. The bottom of that board is two feet or two and one-half feet above the ground, and may be less in some places. This board is in a residence block within the terms of the ordinance. The board at 3723-25 Grand boulevard was erected about 1893 and is in a residence block within the terms of the ordinance. The board at 3847 Grand boulevard was erected eight to ten years ago. No changes have been made on this board, but there may have been repairs on the braces. The board at 4215 Grand boulevard was erected eight or ten years ago. This board has been changed since the passage of the frontage consent ordinance. The bottom is about two feet above the level of the ground. The board at 423-425 Oakwood boulevard was erected about eight years ago. No material change has been made in it since the passage of the frontage consent ordinance. The bottom of the board is about

three feet above the level of the ground. It is in a residence block within the terms of the ordinance. The board at 556 Oakwood boulevard was erected about eight years ago. No change has been made in it since the passage of the frontage consent ordinance. I think the bottom of the board is about two feet above the surface of the ground, but it may be but six inches. This board is in a residence block within the terms of the ordinance. The board
1030 at 5409-19 Cottage Grove avenue was erected about eight years ago. It may have been repaired in the last two years. The board at 2349-51 Jackson boulevard was erected eight or ten years ago and is in a residence block within the terms of the ordinance. The board at 40 to 42 North Laramie avenue was erected about two years ago, or a little longer than that. The board at 47th place and Cottage Grove avenue was altered about a year ago. No frontage consents were filed at that time. The board faces diagonally on Cottage Grove avenue and 47th place. 47th place is a residence block within the terms of the ordinance.

A board was erected at the southeast corner of 48th avenue and Washington boulevard since the passage of the ordinance requiring frontage consents without filing the same. The number of that board would be 4747-49 Washington boulevard. I do not remember when the board at 4748-50 was erected at Washington boulevard, but think it was before the frontage consent ordinance. That block is a residence block within the terms of the ordinance. Perhaps ten or twelve boards in addition to the fourteen mentioned located in residence blocks have been altered since the passage of the ordinance requiring frontage consents.

Redirect examination:

I had an understanding with the building department that the bottom of boards need be raised only three and a half feet above the street grade where the ground in the lot was depressed. We have erected no boards since the passage of the ordinance the bottom of which is less than three and a half feet above the street grade.

1031 Cross-examination:

We have erected boards the bottom of which were less than three and a half feet above the grade of the lot. There are lots which are higher than the street grade, but the boards were raised with reference to the street grade.

Redirect examination:

The board at 2909 Michigan avenue is an instance of this as the lot is higher than the street. This board was erected three and a half feet above the street grade and was approved by the building department.

AGNES MCMAHON, called by defendants, testified:

That she lives at 4329 Monroe street. That near her home a man behind a surface board near 43rd and Madison exposed his person. The man was standing behind the board and exposed himself.

Cross-examination:

This happened about six months ago. The man was standing right up close to the back of the board. This board was on a vacant lot and raised several feet above the ground. It comes right up to the sidewalk. I saw this man about ten minutes after nine in the evening. I did not see him arrested, but went home and told my father. I do not know whether he was drunk as I could not see his face. He stood there with his person exposed. I could not see his face as it was dark, but any one could see his person. There is a saloon
1032 on Madison street about three doors from there. My father is a policeman and when I told him about it he went out to find the man, but he was not there. I do not know where this man came from nor who he was. The sign prevented my seeing his face, part of his body being above the sign and part below. This was the Imperial theatre sign. The Imperial theatre is on Western avenue. I do not know how large the sign was. There were buildings on both sides of the sign. The man was standing close to the back of the sign on the left side and close to the building. I never saw this man again.

OLAF A. ODEGAARD, called by defendants, testified:

That his place of buisness is at 3629 North Halsted and that there is a bill board twenty-five feet north of it. That he has seen, quite a few times, men come behind the board and expose their body.

Cross-examination:

This is between Addison and Waveland avenue. I have conducted a laundry there for two years and have about sixty girls working in it. I reported this to the police, but do not know what they did. About two weeks ago I was called by the corporation counsel's office to come to court. No policeman ever came into my place. I have seen the same thing happen in alleys. Chicago has a population of between two and three millon people. My place of business is about five hundred feet from the police station which I can see from my place of business. This is a business dis-
1033 trict. The men going behind this board were driving traffic and other wagons.

Redirect examination:

The front of the bill board can hardly be seen from the police station.

Recross-examination:

The only thing I heard after reporting this to the police was a call from the corporation counsel's office to come down and testify in this case.

O. B. SABEL, called by defendants, testified:

That he is a building inspector for the City of Chicago and recently inspected the bill board at 3947-57 Drexel boulevard, the

bottom of which was about two feet six inches above the sidewalk. In this block there are twelve residences and five stores on the east side of the street. On the west side of the street are four residences and six places of business. I inspected the board at 4300 Drexel boulevard and there are more residences in that block than stores.

Cross-examination:

I am a regular inspector in the building department, but have not made any annual inspections of bill boards. I have been in the building department for two years. I take the street grade from the sidewalk level and the board at 43rd and Drexel is about two feet four inches above the sidewalk. I made these
1034 measurements with a rule. I do not know how the street grade is determined, but have always taken the curb grade as the street grade. The curb is even with the sidewalk. I do not know, of my own knowledge, how the buildings on Drexel boulevard are exclusively used.

Redirect examination:

I saw the buildings and they appeared to be residences.

JOSEPH NELSON, called by defendants, testified:

That he lives at 3850 Washington boulevard and has resided there about twelve years. That there is a bill board adjoining his home on the west. That his home was robbed shortly after the bill board was put there and was entered through a window behind the bill board by means of a stepladder about fifty feet back of the bill board about seven o'clock in the evening in the fall of 1913.

Cross-examination:

I did not see the robbers. I was not at the house, but there was a young lady upstairs. The house was entered from the pantry window. This is at the northeast part of the house. The front of the bill board is about on a line with the front of my house and comes within five or six inches of its side. The pantry is on the west side of the building and is in a little shaft which could be seen from the street if the sign board were not there. The jog in the building is about a foot and half or a foot and the shaft
1035 is probably eight feet long. The window is a small window only about a foot and a half wide. The robber used a stepladder which he got from the rear of my basement. My building faces south and the bill board faces south on the west side of my house. I do not know just where the stepladder was. There is an alley about sixty to seventy feet back of the rear of my house running east and west. The car barns are about one hundred and fifty feet from my house and cover about a half a block. West of the sign board is a vacant lot, then a cottage, then a vacant lot and then two cottages adjoining. The window faces south in the shaft and the man went north through the window. The shaft is not more than ten feet from the rear of the wall of my house.

There are two windows in this shaft. The man went in the windows from the Washington boulevard side. The robbery was committed the latter part of September or the first part of October, 1913, about seven o'clock. This board is raised some distance from the ground. It consists of two twenty-five foot boards. The window entered is possibly seventy feet from the front. I do not know how I happened to be called in this case. I reported this to the police, but have heard nothing from them. The window entered was about one hundred and seventy-five feet from the alley. There is no building on the rear of my lot.

Redirect examination:

Practically all of the buildings in that block are flats and residences used for residence purposes.

1036 Recross-examination:

On one side is 40th avenue upon which there is a street car and on the other side is Hamlin avenue. There is a car barn on the south side of the street. It covers about a half a block. Then there is a garage and three cottages and some vacant lots all west of my house. There is also a hospital and a number of flat buildings and residences on that side of the street. There are no stores there. On the north side of the street is a flat building and the car barns west of me. There are about ten to twelve vacant lots. The greater part of the block in which I live is not occupied by the car barns and garage.

Redirect examination:

The distance between the two streets on either side of my house is about two ordinary blocks.

Recross-examination:

Springfield avenue is between Hamlin and 40th, but does not run through Washington boulevard.

JOHN MEANS, called by defendants, testified:

That he is a building inspector of the City of Chicago and inspected a bill board at 2121 Michigan avenue two weeks ago. The bottom of this board is about twelve inches above the surface of the ground. The buildings in that block are used as residences.

I inspected a board at the southeast corner of 35th and
1037 Grand boulevard. The bottom of the board facing Grand boulevard is about two feet above the level of the ground. The buildings in that block are used exclusively as residences. There is a board about a year old at the northeast corner of 35th and South Park avenue which faces diagonally across the corner. The buildings on South Park avenue are residences. This board is a double-deck board. I inspected the board at 3500-3504 Michigan avenue. All the structures in this block are used as residence-.

Cross-examination:

I have been in the building department about two years, but have not made annual inspections of bill boards. I have examined several bill boards in the last year; some new and some old. Inspections made by me are reported and these reports kept by the building department. The grade of the street is the same as the grade of the curb. The board at 2721 Michigan avenue was about twelve inches above the grade of the street. I measured this from the grade of the curb. The difference between the grade of the curb and of the street at this point is not more than one or two inches. I do not know whether business was being conducted in any of the residences. I did not go in any of the buildings on Michigan avenue between 27th and 28th street-, nor inquire as to what people were doing in these residences, but only looked at the exterior of them. There may be a difference between the grade of the lot and the grade of the street at the southeast corner of Grand boulevard. The bottom of this board is in the neighborhood of two feet above the street grade. The surface of the
1038 ground there is uneven, varying about six inches at different points. I did not go into any of the buildings on Grand boulevard and the street next south. The old board had been at the northeast corner of South Park avenue for a long time. It now stands diagonally across the corner. I did not look into the buildings on South Park avenue from 35th street to the street next north. I do not know what use was made of the buildings. The board at 3500 Michigan avenue is twenty years old. I did not enter the buildings in that block nor inquire as to the use of same. There is an automobile building in the course of construction there, but this is not automobile row.

JULIA A. SMITH, witness called for defendants, testified:

That she lives at 4745 Washington boulevard. That a sign board faces the street in the lot adjoining her residence and that the space behind the board is frequently used by passers-by as a toilet. That there is a store on the corner of 48th avenue and Washington boulevard. The bottom of the board is about three and one-half feet above the surface of the ground. Counsel for complainant concedes that the nuisances complained of are committed in the absence of the presence of police.

1039 MARIA REUTER, witness for defendants, testified:

That she has lived at 4309 West Monroe street for seven years. That while walking on Madison street near her home early in the evening, a man standing behind a bill board insulted her by exposing his person.

Cross-examination:

This occurred in the latter part of September, 1913; that the bill board was raised above the ground. That the man came from behind the board after she had passed, waiting for some one else to

come by and when some children and girls came along, he crawled back of the bill board again. That she reported this to the police who endeavored to apprehend the man. That the man was later arrested and sentenced. That he was arrested last December.

P. M. MORRIS, witness for defendants, testified:

That he is a building inspector of the City of Chicago, and inspected a bill board at 2758 Belmont avenue, the bottom of which was three feet above the surface of the ground thereunder. That in the block in which said board was located, there are twenty-seven or twenty-eight buildings used exclusively for residence purposes and three used for other purposes.

1040 Cross-examination:

The street at that point is being paved. The height of the bottom of the bill board above the street grade was not ascertained. There is a saloon on the corner in that block. The use of the buildings in the block was determined from their exterior appearances. No inquiry was made of the occupants of the houses as to their use. No inspection was made of this bill board or locality at the time it was erected.

J. A. CHRISTIANSON, witness for defendants, testified:

He is a building inspector of the City of Chicago. Inspected the bill board at 2908 Michigan avenue, finding it to be from nineteen to thirty-four inches above the surface of the ground. That the board at 4215 Grand boulevard is from twenty-seven to thirty inches above the surface of the ground. There are two boards at this location—one of which belongs to the complainant. That there were about thirty buildings in the block all but two of which were used exclusively for residence purposes. That a board at 5028 Grand boulevard is from twelve to fourteen inches above the surface of the ground. That the buildings were examined from the exterior to determine their use and that out of about forty buildings in the block, five were used other than exclusively for residence purposes.

1041 Cross-examination:

Did not enter the buildings except to see the mail boxes. No measurement was taken of the height of the bottom of the boards mentioned above the street grade.

PETER C. HOEY, witness re-called for defendants, testified:

That paper marked defendants' "Exhibit 2" is a copy of a permit issued by the City of Chicago for the erection of the bill board at the southwest corner of Irving Park boulevard and 40th avenue, which shows same was issued February 15, 1912, and states compliance with all ordinances is necessary.

ADOLPH J. FENCL, witness for defendants, testified:

That he is a building inspector of the City of Chicago; made an inspection of the bill board at 3858 Washington boulevard on April 9, 1914. That there were thirty-seven buildings in the block in which said bill board was located.

CHARLES KRUTCHOFF, witness for defendants, testified:

That he has lived at 3510 Michigan avenue for your years. That on the adjoining vacant lot north of his residence, a large bill board extends, facing Michigan avenue and 35th street. That
1042 many times, and recently, all these boards have been used for public nuisances. That he has seen men go behind the boards and use them as toilets.

Cross-examination:

That he has seen other places in the City of Chicago where the space is used in the same way.

CHARLES B. BALL, witness for defendants, testified:

That he is chief sanitary inspector of the department of health of the City of Chicago. He is a graduate of the Sheffield Scientific school, Yale university, was for seven and one-half years inspector of plumbing in the City of Washington, D. C.; was for two years chief sanitary inspector of the tenement house department of New York City during the period of its organization, and has been in his present position since 1904. That he is a member of the American Society of Civil Engineers, the Royal Sanitary Institute of Great Britain, charter member and ex-president of the American Society of Inspectors of Plumbing and Sanitary Engineers. That he has studied and observed the causes of unsanitary conditions out of doors in the City of Chicago and in other cities for the past twenty years.

Mr. Hoover: Based upon your observations, training and study, tell if you have an opinion, the effect that the maintaining of bill boards and sign boards attached to the ground in this city has upon the general sanitary conditions out of doors.

Mr. Hummer: I object to that question as being incompetent; no foundation laid for it; not based on the various acts in
1043 the case; the witness is not shown to be familiar with the facts relating to bill boards, and there is no condition shown for it—there are so many objections to it, but I think I have covered the principal objections. * * *

The court sustained the objection.

Mr. Hoover: Exception.

Witness testified that he has observed bill boards and sign boards in the City of Chicago on many occasions with relation to their effect upon the general sanitary condition of the city. That in his opinion there is a definite relation between bill boards on the surface of the ground and unsanitary conditions out of doors.

Mr. Hoover: Do you know what that relation is?

Mr. Hummer: I object to it, your honor.

The Court: Yes, sustained as to that.

Mr. Hoover: Have you an opinion as to what that relation is?

Mr. Hummer: I object to it as being too speculative, and not based on any facts apparently within this witness's knowledge in the records.

(Objection sustained.)

Witness testifies that he has many times observed bill boards and sign boards located on private property in the city.

Mr. Hoover: State if you have an opinion as to the difference in the effect between bill boards on private property on sanitary
1044 conditions from and other structures on private property on sanitary conditions.

(Objection to question sustained.)

Witness testifies that he has seen frequent examples of unsanitary conditions around bill boards, which evidence was stricken out over objection of defendants.

Witness testified that a week before, he observed conditions around the bill boards at 35th street and Grand boulevard, and that the bill board at the northeast corner is raised above the ground about two and one-half feet and consists of three boards, one parallel with 35th street, one parallel with Grand boulevard, the other being diagonal. Behind this board, within four or five feet he saw three fecal deposits. That there were evidences of urination behind the board; that there are three similar boards on the southeast corner of 35th street and Grand boulevard; that behind these boards there were fecal deposits and a swarm of flies on the ground. That these were the only boards specifically observed by him for four or five years. That at the time of a former trial, he observed a number of deposits behind bill boards located on Jackson boulevard east of Lake street, and behind other boards.

Mr. Hoover: State whether or not in your opinion, based upon your observations of the bill board at the northeast corner of 35th street and Grand boulevard, that bill board had anything
1045 to do with the presence of fecal matter you stated you found there.

(Objection to that question for reason that it does not call for an opinion, sustained.)

Mr. Hoover: Have you an opinion as to the effect of the bill board as to the presence of fecal matter which you found on that occasion?

(Objection to that question; it does not call for expert evidence. Sustained.)

Mr. Hoover: In your opinion, do bill boards cause the accumulation around them of rubbish, fecal matter, urine, inflammable material or any of them?

(Objection to question as not calling for expert evidence. Sustained.)

At the present time I have seventy-seven inspectors working under me.

The number of reports of inspections in my bureau exceeded 175,000 last year, a very large portion of these reports being examined by me.

Mr. Hoover: In the course of your experience have you had occasion to observe the causes for unsanitary conditions out of doors, and what are those causes?

A. I have.

Q. What are those causes?

(Objection to question sustained.)

Witness withdrawn by defendants.

1046 HARRY C. THOMPSON, witness for defendants, being recalled, testified:

That he inspected a billboard at 5028 Grand boulevard on March 13, 1914, which bore the name of the Thomas Cusack Company on same and directly behind which was found one deposit of fecal matter. That he made an inspection of a board at 2721 Michigan avenue on March 30, 1914, bearing the name of the Thomas Cusack Company, about ten feet behind which he found deposits of fecal matter; that he inspected a board at 3959 Drexel boulevard and found back of the board at the north end, two deposits of fecal matter. That he inspected a board at 4502 Drexel boulevard and found behind the board against the residence at the south end, three deposits of fecal matter.

Cross-examination:

The boards above referred to are the only ones inspected on that day. On the preceding day three boards were inspected. That the board at 4502 ran up to the building and was close to the ground except for a little space about ten feet north of the building beside which the deposits mentioned were found. The only space examined was that immediately behind the board. That he went behind the boards from the street and did not go into the alleys. That there was a fence adjoining the north end of the board on Michigan avenue and extending back to the alley, and that about ten feet behind the board near the fence deposits were found.

1047 CHARLES B. BALL, witness for defendants, being recalled, testified:

That he is familiar with the locations at which unsanitary conditions exist in Chicago.

Mr. Hoover: Assume a lot on a street in a block in which one-half or more of the buildings are used exclusively for residence purposes, with a vertical, opaque structure not more than six inches thick, twelve feet high and twelve to thirty or more feet long, the

bottom of which is raised three feet six inches above the level of the ground under the same, supported by braces and posts on the side of the same away from said street and parallel or nearly parallel to said street, and the same lot without any structure thereon, have you an opinion whether or not there would be any difference in the quantity and accumulation of substances creating unsanitary conditions on such lot?

(Objection to question sustained.)

Mr. Hoover stated that the witness would answer that he had an opinion and that such a lot with a structure thereon as described would contain larger quantities of accumulation of substances creating unsanitary conditions than without such structure. Witness testified that he had observed unsanitary conditions on lots on which bill boards were located.

Mr. Hornstein: Have you an opinion as to whether there
1048 is any connection between the presence of the bill boards on the lots in question and the unsanitary conditions that you observed?

(Objection to question sustained.)

Defendants offered to prove by witness that from his occupation and experience and knowledge of sanitary conditions in large cities he is of the opinion that the presence of bill boards on vacant lots has a tendency to bring about unsanitary conditions on the lots in question. The reports made by inspectors are written reports and are filed with the department. They are retained for about three years. Witness was asked whether any general condition relative to the location and character of the structures in places at which the unsanitary conditions were found were shown by the records of the department.

(Objection to question sustained.)

Mr. Hoover: Assume a lot on a street in a block in which one-half or more of the buildings are used exclusively for residence purposes, with a vertical, opaque structure not more than six inches thick, twelve feet high and twelve to thirty or more feet long, raised three feet six inches above the level of the ground, supported by braces and posts on the side of same away from said street and parallel or nearly parallel to said street and the same lot without any structure thereon, have you an opinion as to whether or not the presence of the structure mentioned on such a lot invites the commission of nuisances?

(Objection to question sustained.)

1049 Offer to show by the witness that in his opinion the presence of such structures on such lots invites the commission of nuisances.

(Objection to offer sustained.)

Mr. Hoover: Mr. Ball, would such location of such a structure

just mentioned tend to invite the deposit of human discharge, if you have an opinion?

(Objection to question sustained.)

Witness asked whether such a structure would in his opinion incite the commission of nuisances.

(Objection to question sustained.)

Offer to show by witness that in his opinion such location of such a structure does incite the deposit of human discharge.

(Objection to offer sustained.)

Witness testified that substances which had been testified to as being found behind bill boards would, in his opinion, endure for a longer time in the presence of such a structure than in an absolutely vacant lot; that he has observed the effect of shelter with regard to the decomposition of fecal matters and has made observations of the life of the nuisances in such sheltered conditions; that he has made many observations in the course of his duties of unsanitary conditions; that such deleterious substances as have been testified to as being found about bill boards would remain for a longer time and constitute a nuisance for a longer period of time in the presence of a bill board than without such structure on
1050 the lot on which such substances are found; that the cause of this is that such a structure would interfere with the direct action of the sun and tend to prevent the passage of air currents over the surface of lots; that the presence of a bill board would tend to prevent the destruction of the harmful effects of accumulations of this nature by the general elements. Answer stricken out as to harmful effects of accumulations. That the duration of deposits would be longer on a lot on which there was a bill board as against the decomposition of the elements. That the conditions he found behind the bill boards at 35th street and Grand boulevard would have a dangerous or prejudicial effect upon the persons living near the same; that this effect upon the people living near bill boards would be the same at the other locations testified to.

Cross-examination:

The reports of inspections made by the sanitary bureau were not confined to bill boards. There were reports as to bill boards, but I do not remember at what time they were made. There are vacant lots with no bill boards on the same in many places of the city upon which is refuse, cans and garbage. No report to the police department was made as to the conditions behind the boards testified to. The disintegration of deleterious matter may be brought about by the action of the sun, air, rain, snow and temperature changes. Deposits concerning which I have testified being within four to five feet from the back of the bill board would be shielded by them from the elements. Rain falls in all kinds of ways and to some
1051 extent spreads over the surface of the ground. I have observed many times that snow drifts in protected places, but cannot testify with respect to a specific location. The fall of snow

would not be uniform around bill boards and other parts of the same lot. I never noticed this with respect to a bill board, but answered from my general observations as to the falling of snow. Part of the space north of a bill board running east and west would not be affected by the sun's rays. The sun might shine on some of the deleterious matter testified to in some cases, but in many cases it would not. Disintegration of human fecal matter has been observed by me, but not specifically with regard to bill boards. The bill board at the south at 35th street immediately adjoins a residence and the bill board at the north at 35th street immediately adjoins a residence. The deposits found were rather close in each case to the residences. The deposits found there, to a degree, injure the health of the people living in the adjoining residences because of the foul air, which contains particles of fecal substances and is blowing about. It is possible that the bill board might interfere with the currents of air and in some cases be a protection in preventing the blowing about of the germs contained in the fecal matter. Witness states that he does not think a livery stable would affect the health more than the conditions attending bill boards; that the structure itself is not dangerous to health in his opinion.

1052 JOHN C. MCDONNELL, called as a witness for defendants, testified:

That he is assistant fire marshal in charge of the bureau of fire prevention and public safety of the City of Chicago, which latter position he has held since August, 1912; that he is familiar with the location of the fire stations and engine houses in Chicago.

Mr. Hoover: With respect to the character of the structure- served by these fire stations and the area of territory served by these fire stations, is there any difference in the area served by a single fire station located in residence territory than by one located in territory other than residence territory?

(Objection to question sustained.)

Witness testified that fire fighting apparatus is not found in private residences.

Cross-examination:

That he does not go into residences looking for fire fighting apparatus and cannot state that there is no such apparatus in some residences.

Redirect examination:

That he has been in residences extinguishing fires and has never found any fire fighting apparatus in such residences.

Recross-examination:

That in extinguishing a fire in a residence, fire fighting apparatus is not looked for.

1053 MATTHEW MURPHY, witness for defendants, testified:

That he is a pipeman in an engine company of the Chicago fire department. On June 7, 1913, in response to an alarm, a bill board at 604 Lake street was on fire at the rear. That waste paper and other accumulations behind the board were aflame; that there was another fire at the same place July 12, 1913; that on that date the fire was burning under the sidewalk and around the bill board.

Cross-examination:

That the first fire was in the middle of the lot and the second fire was under the sidewalk and bill board; that the bill board was not burning.

GOTTFRIED KOEHLER, witness for defendants, testified:

That he has been assistant health commissioner of the City of Chicago for three years, and has had special training in bacteriology as an instructor and otherwise; that he is experienced in handling infectious diseases and with substances containing disease producing bacteria; that human fecal matter may contain typhoid bacilli, the bacilli of cholera, tubercular bacilli, causing tuberculosis, colon bacilli, dysentery bacilli, all of which bacteria or germs are infectious and may cause disease in human beings to whom they are transmitted; that the diseases from such bacilli are typhoid fever, cholera, tuberculosis, dysentery and diarrhœal diseases; that such germs may be carried by flies and other insects, in the
1054 air by wind and by contact; that in his opinion fecal deposits uncovered on the ground in open air are dangerous to the health of human beings living in close proximity thereto and that it may cause discomfort from the odor.

Cross-examination:

That the odor, if persistently present and quite strong, may be dangerous to health. The odor momentarily would not be dangerous to health. The odor from one deposit without a window might cause discomfort to some persons; that tuberculosis bacilli may be in the sputum, is frequently in urine and feces and in parts of the human body and in the bodies of flies; that they also appear in the offal of animals, but are not obtained from them per se; they may be found in the dust in the streets, but are not found contained in nature only in connection with a diseased human being. Human excrem*ation* has the same characteristics and the same germ breeding qualities wherever it is exposed.

Redirect examination:

There is difference in the susceptibility to these diseases of different classes of people, children being more susceptible to dysentery and diarrhœal diseases and young adults to typhoid fever and tuberculosis. What has been stated relative to human fecal matter is true of human urine.

1055 Recross-examination:

Such germs would be more dangerous where large numbers of people are congregated, but would be less dangerous in business houses, stores, offices, factories and shops to children, because there are very few children in such places.

THOMAS J. COCHRAN, witness for defendants, testified:

That he is a captain of the police department of the City of Chicago and has been an officer in said department for seventeen years; that the absence of police protection and light afford protection to disorderly and law-breaking persons; that the most prevalent law-breaking is the disturbing of public peace—next robbery, and next offenses against the person. Women and children are more frequently subjected to indecent exposure than other offenses.

Sections 695, 696 and 697 of the Chicago Code of 1911 introduced in evidence (set out in decree).

Sections 698, 699, 700, 702, 704 and 708 of the Chicago Code of 1911 introduced in evidence (set out in decree).

Section 709 of the Chicago Code of 1911, as amended, relating to fences, introduced in evidence.

Section 710 of the Chicago Code of 1911 relating to illuminated and roof signs introduced in evidence.

Defendants rested.

1056 *Rebuttal.*

FRANK W. BEAVER, witness for complainant, testified in rebuttal:

That he inspected the locations testified to by witness for the defendants; that he went on vacant lots, in alleys and behind houses, in barns, behind telephone poles, sheds, railroad walls, under the elevated railroad structures; that he made notes, but not of all the locations inspected; that since 1888 the most of his work has been in securing locations by reason of which it was necessary for him to go all over the city and acquaint himself with locations where bill boards could be erected; that the location at 311 South Market street is under the elevated road; that on an elevated post behind this board he found two or three deposits; that in the alley behind this board there were urine stains. Behind the board at 409 South Fifth avenue there is a loading platform around which were some stains of urine about seventy-five feet behind the bill board. In the alley in the rear I found deposits. Behind the board at 319 South Fifth avenue is a vacant lot in the rear of which I found two deposits and urine stains. In the rear of the engine house adjoining I found garbage. In the rear of the lot behind this board I found two deposits. I inspected two lots on this location. On one of the lots under the sidewalk I found ten deposits and urine stains. There was a board on the
1057 vacant lot at 870 South State street, the ground being clean in front of the same, refuse and urine ten feet behind the

same. In the alley in the rear I found garbage and urine stains. In the alley behind the board at the northwest corner of Wabash avenue and Hubbard court I found manure, shoes and urine behind some of the buildings. I saw a man urinating behind the board against the building at 807 South State street about ten feet behind the board. Back of the building next south to this board, I found garbage, urine and deposits. Behind the car barns south of the board at 5431 Cottage Grove avenue, I found refuse and urine in the alley. Inside the barn on this alley were deposits and strong stenches. On the vacant lot with the bill board in front at 5427 State street, I found refuse about twenty feet behind the board. On the vacant lot with the sign board in front at 5421 South State street, I found in the rear manure. There was a stable adjoining this lot. The board at 5028 to 5042 Grand boulevard was raised twelve inches above the ground. Behind the building next adjoining I found garbage and signs of urine. I found the lot at 5419 Cottage Grove avenue clean. In the alley behind the board at Cottage Grove avenue and 47th place, I found garbage. Fifty feet behind the board at 5300 Drexel boulevard I found tin cans, shoes, garbage and refuse. I saw one deposit about seventy-five feet from the board. In the alley behind the board at the corner of Drexel and Oakwood boulevards, I found ashes and in a vacant lot off this alley I found papers and several deposits. In the alley behind the board at 566 Oakwood boulevard
1058 I found urine stains on the barns and three deposits. The ashes were not in cans. Behind the board at 415 Oakwood boulevard in the alley about one hundred feet back along the elevated structure, I found stains of urine. Behind the fence at the back of the lot at 4215 Grand boulevard, I found garbage and stains of urine, but nothing behind the bill board there. About one hundred and fifty feet in the alley behind the bill board between Grand boulevard and 40th street, I found one deposit, garbage and ashes. On a vacant lot near the bill board at 3843 Grand boulevard, I found some ashes and tin cans. Behind the bill board at 471 Milwaukee avenue I found a considerable amount of refuse. In the alley behind the bill board at 436 South Kedzie avenue, I found urine and deposits. Behind the bill board at 420 South Kedzie avenue, I found some tin cans, garbage and ashes. In the alley behind the bill board at 3129 Washington boulevard I found some ashes and garbage and street sweepings. Same condition in the alley behind the board at the southeast corner of 48th street and Washington boulevard. About fifty feet from this alley on 48th street in an old shed, I found an accumulation of deposits *of* urine. In the alley behind the board at 845 West Harrison street, I found two deposits. Also on a lot in the rear of a building near this location.

(Objection made by solicitor for defendants, as to competency of evidence as to conditions behind other structures than bill boards. Overruled.)

Along the railroad wall behind the bill board at 1710 South Clark street I found a number of deposits about seventy-five feet
1059 behind the board. Beside the stable adjoining the bill board at 2211 South State street, I found signs of urine.

In the alley behind the board at 2541 South State street I found urine and deposits, especially behind barns adjoining the alley. Behind the board at 3500 Michigan avenue I found garbage and behind the barn in the alley I found urine stains, and in the alley behind 3518 Wabash avenue I found a deposit. Behind the board at the northeast corner of South Park avenue and 35th street I found refuse about twenty-five feet back and in the alley running back of this board I found urine stains, garbage and tin cans. Behind a barn near the southeast corner of Grand boulevard and 35th street I found urine stains and refuse and in the barn three or four deposits. Behind the bill board at 2721 Michigan avenue along the fence abutting it, I found one deposit and urine stains. In a barn near there I found six deposits. Twenty feet back from the bill board at 2523-2529 State street I found tin cans and refuse. Behind some buildings at 2542 State street I found garbage and stains of urine. About twenty feet behind the board at 1440 West Van Buren street I found ashes. In a half basement behind some houses I found stains of urine. Under the elevated road at 1722 West Lake street I found garbage, ashes and stains of urine. In the rear of a barn on the adjoining lot in the alley I found manure and signs of urine. In a vacant lot at the southwest corner of Madison and Kedzie avenue I found behind a fence urine stains, ashes and garbage, just across the street from a lot with a bill board on it behind which was broken asphalt and weeds. Under the elevated structure along the 1060 side of building abutting same I found urine stains. About fifty feet behind the bill board at 1742 West Van Buren street I found one deposit and in the alley there was refuse and stains of urine.

I found some ashes in the alley back of the board at the corner of 40th avenue and Irving Park boulevard. About fifty feet behind the board at 419 South Ashland avenue, behind elevated posts I found two deposits and refuse and beside the barn behind this I found two or three deposits and three or four dead dogs and cats. In the alley behind the bill board at 121-123 South Paulina street, I found urine stains. Behind the board at 1719 Washington boulevard under the elevated structure for about two hundred feet, I found garbage and ashes. On the lot at 735 North Western avenue, behind the bill board, it was clean, but in the alley behind the vacant lot on Chicago avenue I found a deposit, garbage and ashes. I also found a deposit behind a telegraph pole in this alley. Immediately behind the board at 802-804 North Western avenue it was clean, but behind the building back of it I found deposits and urine stains. Behind the elevated poles behind a board at 1720 West Washington street I found urine stains and the same condition at 420 South Laflin street. In the alley behind the latter board under the elevated structure I found a deposit.

Two photographs of the bill board at the corner of 47th place and Cottage Grove avenue introduced in evidence by the complainant and marked Complainant's "Exhibits 52 and 53."

Behind buildings and in the alleys near 2756 Belmont ave-
1061 nue I found garbage, tins cans, ashes, dead dogs, urine stains and one deposit. At West Madison and 43rd, I found a vacant lot with three signs about seven feet from the ground on it. One sign was 4x10, I saw a sign in the block east between 42nd and 43rd, which was the only other sign I saw in this vicinity. Seven or eight years ago at 5th avenue and Jackson boulevard, there were two or three old buildings and a saloon. Thirteen of the locations I have testified to were under elevated structures. Sixteen were in what appeared to be residence blocks. The others were in what appeared to be business locations.

Photographs of space under the elevated structure at the rear of 1611 State street introduced in *in* evidence and marked Complainant's "Exhibit 53" over objection by solicitor for defendants.

That a vacant lot at 5146-5148 Indiana avenue contained refuse; that a vacant lot at 5157 Calumet avenue contained refuse and one deposit; that a vacant lot at 5608 Prairie avenue contained refuse; that vacant lots at 5320 Woodlawn avenue, 5011-5013 St. Lawrence avenue, and 5244 Grand boulevard, corner 34th street and South Park avenue, 321 East 29th street, 2913 Calumet avenue, contained refuse on same. Vacant lots at 4033 Michigan avenue, 3816 Prairie avenue, 3822 Prairie avenue, 556 Oakwood boulevard, contained rubbish on the same. That at 572 Oakwood boulevard, a lot containing a bill board thereon was clean. That lots at 4547 St. Lawrence avenue, 4327 Langley avenue and 6433 Blackstone avenue with no bill boards thereon contained refuse. That lots at 6433 Harvard avenue, 6419 Rhodes avenue, southeast corner Michigan avenue
and 68th street, 5331 Michigan avenue contained refuse
1062 thereon. That lots at 5340 Indiana avenue, northwest corner of Prairie avenue and 44th street, northwest corner of 30th and Michigan contained refuse thereon. That a lot at 3421 Michigan avenue with a bill board on the same was clean; that the alley from Polk to Harrison streets in a business district contained refuse. That a lot containing a bill board at 1100 Michigan avenue and 1134 Michigan avenue was clean. That a lot at 1208 Michigan with no sign board thereon contained refuse; that a lot at 1341 Michigan avenue and 1719 Michigan avenue with bill boards thereon were clean; that a lot at 2114 Michigan avenue with a bill board thereon contained rubbish on the same; that a lot at 2818 Cottage Grove avenue with a bill board thereon contained rubbish in the rear; that a lot at 2820 Cottage Grove avenue with no bill board thereon contained rubbish; that a lot at 2972 Cottage Grove avenue with no bill board thereon contained rubbish. A lot at 2952 Cottage Grove avenue next adjoining a lot with a bill board thereon was clean except at the back of the lot where there was some rubbish; that at the back of the lot at 33rd place and Cottage Grove avenue behind a bill board there was rubbish; that at the back of the lot at the northwest corner of Cottage Grove avenue and 34th place having a bill board thereon there was rubbish; that behind a fence at the northeast corner of Drexel boulevard and 40th street was found evidences of urine. The

lot at 47th street and St. Lawrence avenue containing a bill board thereon was clean except near the alley. That a lot at the northwest corner of Grand boulevard and 46th street containing a bill board was clean except at the alley. Same being true at 47th and Mich-
1063 igan. Same situation at the northwest corner of 47th and Michigan, 4306 Indiana avenue. At 4309 Indiana avenue a lot with no bill board thereon contained refuse, urine stains on the sides of the building adjoining and one deposit. A lot with a sign board, at 4313 Indiana avenue, was clean in front, but contained rubbish in the rear. Same condition at the northeast corner of Michigan avenue and 39th street. Same at the northeast corner of Cottage Grove avenue and 47th street. Same at northwest corner of 39th street and Michigan avenue; that a lot with a sign board on it at 41st and Michigan was clean; that a lot with *with* a sign board on it at 4044 Michigan avenue contained refuse in the rear on the alley. Same with respect to northwest corner of 40th and Grand and 4010 Grand. Same at the northwest corner Grand and 39th, northwest corner 35th and Vernon, southwest corner Prairie and 33rd, and northeast corner of Indiana and 23rd. Thomas Cusack Company made a lawn in front of the board at the last mentioned location. On a lot with a bill board thereon at the southwest corner of Indiana avenue and 37th street there was rubbish at the rear of same. Same condition at 3631 Indiana avenue, 3613 Indiana avenue, northwest corner Indiana avenue and 26th street, 2636 Indiana avenue, 3666 Indiana avenue. Same at southeast corner of 32nd and Prairie avenue; in an alley in the rear of 5106 Prairie avenue I found eight urine stains. The Cusack Company mows the grass in front of boards and at times sows seed and picks up papers at special
1064 locations where a number of people circulate. I look at these locations almost every day, examining the entire city. The Cusack Company keeps the lawns cut and trimmed at 1209-1211 Michigan avenue, 1719-1723 Michigan avenue, corner 18th street and Indiana avenue, 34th street and Cottage Grove avenue, Drexel boulevard and Oakwood boulevard, Grand boulevard and 35th street, 5028 Grand boulevard, 47th and Grand boulevard, 47th and Michigan avenue, 43rd and Michigan avenue, 39th and Michigan avenue, 36th and State street-, 47th and State street-, 63rd and South Park avenue, on the south side, and at 1306 Jackson boulevard, Jackson boulevard and Perry street, Jackson boulevard and Aberdeen street, Madison street and Kedzie avenue, Washington boulevard and California avenue, Washington boulevard and 43rd avenue, Washington boulevard and 48th avenue, 3139 Washington boulevard, 40-42 North Larrabee street, 12th street and Marshall boulevard, and on the North Side at Sheridan road and Melrose street, Sheridan road and Cornelia street, Sheridan road and Addison street, Sheridan road and Grace street, *Sheridan Road and Sheridan road,* Sheridan road and Devan avenue, Sheridan road and Arthur avenue, Clark street and Anita Terrace, Clark street and Sheridan road, Clark and Chestnut streets, 854 Cass street, Division and Southport, 1405 Diversey boulevard, Division street and Logan boulevard. There are other locations in addition to these. Under the elevated structure of the

Logan Square and Garfield Park branches, I found garbage, ashes, deposits and urine stains on the posts for about a mile. In
1065 the alley between Indiana avenue and Michigan avenue I saw deposits and rubbish. In an alley south of Madison and Aberdeen streets, I found ten urine stains, garbage and ashes. In an alley north of Madison street between May and Ann streets, I found ashes, six deposits and twenty urine stains on the building. 1155 West Randolph street, back of the building adjoining the vacant lot, I found four deposits and urine stains. At 406 North Racine avenue, on a vacant lot with no sign, I found garbage, tin cans and ashes. On a vacant lot with no sign, at 1158 Austin avenue, I found shoes, urine stains on the walls of the adjoining buildings, ashes, tin cans and garbage. In two alleys just north of Grand avenue at 175 North Emma street, I found three urine stains against the walls of buildings. On a vacant lot at the northwest corner of Curtis and Erie streets in the alley behind the buildings I found three deposits, garbage, ashes and tin cans. Same at 650 North Carpenter street. At 948 North Erie street behind a picket fence I found six deposits and seven stains, ashes, garbage and tin cans. Ashes and tin cans at 851 North Morgan street. Same in the alley at the rear of 1015 West Chicago avenue. Same on the lot at 647 Cambridge avenue. Same in the alley between Cambridge and Milton avenues, and in the lot in the rear of the houses at 944 Orleans street and under the Northwestern elevated structure at Orleans and Locust streets and at 871 Orleans street on the vacant lot. Same behind the elevated piers of the elevated road at 915 Orleans street and at Oak street. Along the side of the building at 307 Hill street next to the elevated structure I found six urine stains. Under the Northwestern ele-
1066 vated at West Elm street a lot with a picket fence on it contained six urine stains, garbage and rubbish. In an open shed at the rear of 940 North Clark street I found twenty-two deposits, garbage, ashes and refuse. These inspections were made March 28th, 29th, April 1st and 16, 1914.

Permit for board at 2758 Belmont avenue introduced and marked Complainant's "Exhibit 55."

The board at 5432 Cottage Grove avenue was built about 1893 and in 1912, under a new permit, the board was materially altered. The board at the corner of 40th avenue and Irving Park boulevard was erected under a permit since the passage of the ordinance. The board at 2443 Michigan avenue was built just before the World's Fair. It has been altered since at which time we secured a permit. The board at 3500 Michigan avenue was built about 1892. The board at the southeast corner of 35th street and Grand has two sides—the Grand boulevard side was built about ten years ago, the 35th street side was built about a year ago—that is, altered. On 35th street there is one building used by the Chicago Telephone Company. The board at the southeast corner of South Park and 35th street was built about ten years ago; the board at 5028 Grand boulevard was built about fifteen years ago; the board at 3947 Drexel boulevard was built in 1892; the board at 4300 Drexel

boulevard was built about ten years ago and is three and one-half feet above the street grade. Board at southeast corner of 47th place and Cottage Grove avenue was built about ten years ago. It was altered under a permit about a year ago. The board at the southeast corner of 48th avenue and Washington boulevard was
1067 built about a year ago. We secured a permit for that board. It has been altered since. The board at 1824 South Ashland avenue is three and one-half feet above the street grade as is also the board at Grand boulevard and 40th. About seventy-five per cent of the bill boards on boulevards are illuminated with electricity. The lights are set five feet apart. The lights are usually above the board and reflect back. There are eight to ten thousand bill boards in Chicago—about four thousand of them being real estate signs, that is, for sale signs. No bill boards of the complainant are maintained on other than private property.

Cross-examination:

The bottom of the board at 816 South Ashland avenue is about three feet above the ground under the same. The complainant maintains about 1,500 surface bill boards in Chicago. Between four and five hundred of the bill boards of the complainant are illuminated. The complainant maintains about four hundred bill boards on residence streets of which about three hundred are illuminated. There are about fifteen boards facing the Northwestern elevated road that are illuminated and about twelve facing the Metropolitan, in all about fifty locations on elevated roads that are illuminated. About ten per cent of the illuminated boards face the elevated structures. About fifteen per cent of the illuminated boards are in the district bounded by Chicago avenue, 18th street and Ashland avenue. The arms supporting the lights extend about three feet in front of the bill board and the light is reflected
1068 back towards the face of the board. There is some light behind the boards. I noticed this at 47th street and Cottage Grove avenue. The lights are practically the same construction as shown in the picture of the board at the turn of Sheridan road. There might be a slight difference in the shape of the reflector. I saw five or six hundred vacant lots this morning other than those I testified about. The elevated piers are about two feet square. The fence on the lot at 2719 Michigan avenue runs east and west, the bill board runs north and south, the bill board being about four feet from the sidewalk and the fence extending to it. I found rubbish and deposits behind telephone poles in alleys behind fences and behind barns. The lot at 948 West Erie street was vacant with no structures thereon, but buildings abutted on each side of same. The lot was 25 feet wide. At about the middle of it I found a deposit. The same is true of the lot at 944 Orleans street and 4309 Indiana avenue. I do not know that the complainant ever watered the grass seed around its bill boards nor do I know of any lot in the City of Chicago containing a bill board which is not clean in front of the same.

Redirect examination:

I went out this morning to inspect vacant lots and alleys. I did not make notes of the locations which I have not testified to because of lack of time. I saw other lots upon which such conditions existed. The five hundred lots which I saw concerning which I made no notes were scattered about the city and intervened between those concerning which I testified.

1069 JOHN A. MURPHY, witness for complainant, testified in rebuttal:

That he has been superintendent of construction of the Thomas Cusack Company for about three years and has been employed by it for about sixteen years; that he has had charge of the erection and construction of bill boards in Chicago for the complainant; that some of its bill boards are inspected each day. These inspections are made when we change the face of the boards, the faces being painted in the shop. I go to all of the bill boards in about six months' time. The company has one gang continuously going around the city examining bill boards and if the structure is defective they report to me. Whenever there is a defective board reported, the repair gang is sent out to repair it. Whenever I see a board that looks as though it needed repair I make a note of it and send out the repair gang. Whenever a notice is received by the city to repair a board it is done immediately. I was with Mr. Beaver on the 28th, 29th and 30th of March, 1914, and made notes of the conditions we saw. On a vacant lot at the northwest corner of Independence and Harvard avenue there was some rubbish. Also at 618 Independence boulevard. On the lot west of 4008 Wilcox avenue, manure was banked up alongside of the adjoining building. At the lot at Wilcox and South Keeler avenues there was rubbish all over the lot. The alley between Monroe street and Wilcox avenue, 40th and 43d, contained garbage, ashes and rubbish. Same condition on the lot at 4124 West Monroe street and adjoin-
1070 ing 4128 Jackson boulevard and at the southwest corner of 23rd and Marshall boulevard. Same condition at the northwest corner of 15th and California avenue and on the lot adjoining 516 Sacramento boulevard. Same condition on lot adjoining 3336 Adams street and adjoining 2954 Jackson boulevard and at the southeast corner of Oakley and Harrison streets and adjoining 2727 Ogden avenue; and at the northwest corner of Kedzie avenue and 16th street. Same condition on lot adjoining 3800 Ogden avenue, 4236 Ogden avenue, 4159 West Congress street, the northwest corner Springfield avenue and Congress street; the northwest corner 12th street and Springfield avenue; northwest corner Ridgeway avenue and 15th street. Same condition at 1457 Hamlin avenue. Behind the bill board at 834 South Ashland avenue near the alley I found a dead dog and refuse. Behind the bill board at 930 Ashland boulevard and 1604 Taylor street, in alley between Polk and Taylor streets and Ashland avenue was refuse. Same condition behind bill board at 1807 West 18th street and 1825

West 12th street and 3040 and 3051 Jackson boulevard. In front of the board at 2619 Jackson boulevard lot was clean with rubbish five feet behind the board. Behind board at 2654 Jackson boulevard was ashes and cans. Some refuse behind board at the northeast corner of Ogden and Washtenaw avenues and some papers in front of that board. Behind board at 1712 Jackson boulevard was one deposit along the side of a fence on the east side of the board.

1071 In the alley between Washtenaw avenue and 12th street near Paulina street there were urine stains, garbage, cans and ashes. Behind the board at 411 South Kedzie avenue I found garbage and ashes.

Cross-examination:

Conditions testified to were not all of the conditions seen by me. I spent three days in making these inspections. I did not report to the police any of the conditions I found on lots containing Cusack boards.

Redirect examination:

I was sent out by Mr. Beaver to make the inspection.

E. P. CANFIELD, witness for complainant, testified:

That he is employed in the leasing department of the Thomas Cusack Company. That he travels over the entire city; that he saw nothing on the lot at 878 Cass street except a bill board. At the northeast corner of Dearborn and Division streets there is a vacant lot about twelve feet below grade filled with water and enclosed by a fence.

Photograph of this lot introduced in evidence and marked Complainant's "Exhibit 57."

At the southeast corner of Clark and Oneida streets I saw a lot with a sign on it which appeared clean. Same at northeast corner Clark and Lincoln streets. On the vacant lot adjoining 2544 North Clark street were ashes around a sign board. On a vacant lot adjoining 2715 North Clark street I found a deposit. On the vacant

1072 lot adjoining 512 Diversy boulevard I found ashes and tin cans. On the vacant lot at the southwest corner of Diversy and Pine Grove avenue and at the southeast corner of Sheridan road and Surf street there was ashes, garbage and refuse. At the southeast corner of Sheridan road and Oakdale avenue the lot appeared to be a dumping ground and I saw a city wagon dumping refuse from the street there.

Two photographs of aforementioned location introduced in evidence and marked Complainant's "Exhibits 58 and 59."

At the northeast corner of Sheridan road and Oakdale avenue there is a vacant lot with a sign board on it. The lot was clean in front of the board.

Photograph of this board introduced in evidence and marked Complainant's "Exhibit 60."

The board last referred to was about fifty feet from the vacant lot just previously referred to. Thirty feet north of the northwest corner of Sheridan road and Hawthorne avenue is a vacant lot with grass in front of the sign board. At the southwest corner of Sheridan road and Addison street is a signboard with grass in front and back of the board. This lot appeared clean. The first lot on Sheridan road north of Diversey boulevard had no sign board and contained ashes, garbage and tin cans. At the southeast corner of Diversey boulevard and Southport avenue the vacant lot with a sign board appeared clean with the exception of a small pile of rubbish.

Photograph of bill board at Sheridan road and Hawthorne avenue introduced in evidence and marked Complainant's "Exhibit 61."

1073 The foregoing were not all the locations seen by me.

Cross-examination:

I spent five hours in making these inspections, but cannot say how many lots I saw in addition to those concerning which I have testified. I made my inspections by driving about in an automobile. There was a photographer with me. I did not report to the police as to any of the deposits on the lots on which Cusack boards were located. While I was making the inspections testified to I got out of the car and looked at locations concerning which I have not testified.

THOMAS K. CANFIELD, witness for complainant, testified:

That he is employed in the lease department of the Thomas Cusack Company; that the Cusack Company has competition in securing sites; that he has made an inspection of locations and reports of the same; that on the lot adjoining 2441 South State street he found rubbish; that on a vacant lot at 2524 South State street he found bed springs, manure and a deposit; that in using the adjective "vacant" he means that the lot contains no bill board. That on the lot adjoining 523 West 55th street he found thirty-two tin cans, ashes and rubbish; that this lot is in a residence district; that at 1652 Normal Park he found garbage and rubbish; that at 55th and Washington boulevard he found the same condition; that adjoining this
1074 lot was a lot with a Cusack board on it thirty feet behind which were five small cans, a boot and shoe and nothing else. That at the northeast corner of 57th and Ashland avenue the lot contained no rubbish except a Cusack bill board; that behind the Cusack board adjoining 4701 Ashland avenue there was rubbish sixty feet back, but nothing within sixty feet. The vacant lot at 5100 Ashland avenue contained garbage and ashes. Same condition on lot adjoining 2816 Washington, the latter lot being completely littered with rubbish. Same condition on vacant lot adjoining 3431 Wabash avenue.

On the lot under the elevated structure adjoining 6316 South Sangamon street there is a deposit at the base of the elevated column.

Also under the elevated structure between Morgan and Racine. On the vacant lot adjoining 4756 Princeton avenue was rubbish and a deposit near the fence on the side of the same.

The vacant lot adjoining 5015 South Wood street contained rubbish. Same on lot adjoining 5316 South Wood street. Same on lot adjoining 2727 West 39th street. Same on vacant lot at 3900 South California avenue. Same on lot adjoining 4238 West 47th street. Same on lot 3343 South Wood street and vacant lot adjoining 3151 South Racine avenue and vacant lot adjoining 1105 West 31st street and on vacant lot adjoining 3307 Emerald avenue. Same at southeast corner of 33rd street and Union avenue. Same about twenty-five feet back of sign board at southwest corner of 70th and Wentworth. Same behind a small structure on lot adjoining. Behind bill board at southwest corner 71st and Wentworth was a small amount of paper, that is the usual amount that would be blown from the street and that the wind would carry. Lot adjoining 103 West 55th street with bill board thereon clean with exception of small amount of papers blown on same by the wind. Behind bill board at 47th and Western the lot was used by the city as a dump. I saw the wind carrying refuse, and tin cans on that lot all around. Lot at southeast corner of Western and Archer with bill board thereon had no evidence of any refuse. Same 2915 24th street.

1075

Witness corroborated reports of conditions stated as existing at 2915 24th street bill board, and 2619 and 2654 West Jackson street, southeast corner of Western and Jackson, 1711 Jackson boulevard. Witness saw other locations than foregoing.

Cross-examination:

Witness saw rubbish also at southeast corner of Congress and Loomis streets, which is very near the complainant's place of business. Witness consumed five hours for three days riding about in a machine making inspections testified to. I reported none of the conditions contained on lots containing complainant's boards to the police.

G. B. REED, witness for complainant, testified:

That he had been general manager for the complainant for four years. That on March 29, he examined the lots containing bill boards on Sheridan road to Roslyn place and found no rubbish in front of the boards, but some trees in the lots, 1 deposit and a few tin cans and pieces of paper about twenty-five feet behind the board. He found no deposits between the bulletin board on Sheridan road and Mr. Dyke's house. On the other side of Sheridan road the ground has been filled in and beyond it toward the lake was evidences of dumping. I saw a city wagon dumping there. We try to keep our locations clean to improve our service. We have keen competition.

1076

GEORGE HASKETT, witness for defendants, testified:

That he has been employed by the complainant for seven years, four years as space solicitor and three years as painter. That he has inspected various locations in the city to ascertain sanitary conditions on the 28th, 29th and 30th of March.

That under the elevated road between Aberdeen and Loretta court was tin cans, garbage, five old wagons, paper, two open manure boxes and a dead dog. Under the elevated structure between Loretta court and Morgan, a man was seen making a deposit. Under the elevated structure between Morgan and Sangamon streets was refuse and one deposit. Same under elevated structure between Sangamon and Peoria. Rubbish under elevated structure between Oakley and Western. Deposit of rubbish behind elevated station between Hoyne and Robey, yard in rear of 1903 West Harrison street contained rubbish. Rubbish under elevated structure between Chestnut and Lake and between Lake and Oak street. Under elevated
1077 structure opposite Oak street station on which was a bill board lot appeared clean for twenty-five feet back of same, but behind elevated pier fifty feet back of same was rubbish and one deposit. Rubbish under elevated structure between Sigel street and North avenue, and between Dayton and Willow streets, and on both sides of Center street thirty feet behind bill boards.

Witness saw conditions testified to by Mr. Murphy which were inspected on March 28th.

Cross-examination:

Deposits under elevated structures were usually pretty close to the piers.

I walked under the elevated structures from block to block but did not report conditions in every block, probably not in half the blocks. Photographs of locations described by witness introduced in evidence and marked complainant's exhibits 62 and 63.

A. P. CANFIELD, witness for complainant, recalled, and testified:

That photographs offered in evidence represent the locations at 2715 North Clark street, the first lot east of Pine Grove on the north side of Diversey boulevard, the southwest corner of North Clark street on Roslyn place and the lot adjoining 2715 North Clark street. Photographs introduced in evidence and marked complainant's exhibits 64, 65, 66 and 67.

1078 GEORGE HASKETT, witness for complainant, recalled and testified:

That photographs following represent lots at 5239 State street, introduced in evidence and marked complainant's exhibit 68, and represent location at 33rd and Union, introduced in evidence and marked complainant's exhibit 69, and represent location at 3434 Wabash avenue, introduced in evidence and marked complainant's exhibit 70 and representing location at 1241 55th boulevard, introduced in evidence and marked complainant's exhibit 71, and rep-

resenting location adjoining 2816 Wabash avenue, introduced in evidence and marked complainant's exhibit 72.

HAROLD CUSACK, witness for complainant, testified:

That he has been employed in the electrical department of complainant for two years. That he inspected some of the illuminated boards of the complainant two or three times a week for the purpose of ascertaining whether or not the lights were burning. That he inspected locations on March 28 and 29 and April 1, 1914. Mr. Secor was with me on March 28 and 29. On the lot at northeast corner of Washington and Kedzie rubbish was burning and refuse was on the same. Refuse on the lots at 3812 and 3946 Washington boulevard, and on the lot at 3504 Franklin street across the street from which was a lot with the bill board on it, which appeared clean.

Rubbish on lots at southwest corner of Ohio and Homan,
1079 northwest corner of Sawyer and Franklin, 3129 Franklin.

Alley between Campbell and Sawyer, running from Courtland and Armitage was filled with ashes. Rubbish on lots at southwest corner of Congress and Kedzie, 2346 and 2423 Kedzie and 2350 and 3005 Logan. Also at 2907 Logan. Refuse on lot at 457 North Oakley and corner of Thomas and Sacramento. Also at southwest corner of Division and Kedzie, at 5733 Washington for twenty feet behind board. At 1720 Washington, lot was clean except for one pump, one shoe and one piece of iron. Same at 1719 Washington bill board except for five tin cans. For twenty-five feet behind board at 2040 Washington lot appeared clean, the rest of the lot being covered with rubbish. Lots at 2335 and 2642 Washington boulevard with bill boards on same appeared clean. Same at 2807 Washington boulevard except for rubbish in lot near the alley. Same at southwest corner Washington and California, and at 3027, 3028, 3127 and 3129 Washington. And at 3850, 4342 Washington, corner 43rd and Washington and 46th and Washington. Same at 4747 Washington, 3515 Franklin, 1809 Humboldt boulevard, northeast corner Kedzie and Franklin, northwest corner Armitage and Humboldt. Behind board at northeast corner Humboldt and Armitage was rubbish, street sweepings and refuse. Behind board at 2754 Logan were tin cans and behind board at northeast corner of Logan and Artesian were tin cans and street sweepings. Behind boards at southwest and northwest corners of Elston and Logan lots appeared clean. Behind fence in rear of house at 1624 West Van Buren street were found

three deposits, garbage and ashes. In old barn at 1722 West
1080 Lake was one deposit and refuse and behind adjoining elevated station was one deposit. In the alley back of 3856 Washington boulevard I found a deposit and refuse. Same in rear of 3860 Washington. Notation was not made of all locations seen.

Complainant's boards are illuminated by electric light thrown from reflectors of one general type of construction about eighteen inches long and ten inches wide fastened to a pipe extending six feet from the face of the boards over the top. The lights are eighteen inches above the tops of the boards. The lights illuminate in front of the boards for ten feet and under the boards for about three feet,

the light is reflected about fifty or sixty feet over the top of the boards.

The lights are put sufficient distance apart to properly distribute light on the board and the direct rays illuminate about three feet thereunder and about fifty feet over the top.

Cross-examination:

In making the inspections testified to I took four days. The first day my speedometer showed I had traveled 110 miles. The second and third days I traveled at least as great a distance and the fourth day I spent three hours. I do not remember how many vacant lots I saw concerning which I have not reported. Not many vacant lots intervene between those testified to. In traveling the 300 miles, and making the inspections I went over the same streets and made reports as to all the vacant lots except a few. I did not report the
1081 conditions found behind the complainant's boards to the police. The electric arms holding the reflectors are placed five feet apart. The reflector is of iron on all four sides, which taper upward. The reflector is secured upon the arms and the electric wires come through the arm. All the reflectors are practically the same. A hole is punched in the reflectors by a machine and the reflectors are soldered on the socket.

The complainant has fifty-eight illuminated boards in resident blocks. I arrived at the number fifty-eight by counting the boards. I never went into the buildings in the residence blocks to ascertain their use. There are about sixty boards maintained in residence blocks with no illumination. I do not know the exact number nor do I know the total number of boards in the residence blocks. The street grade is taken from the crown of the street in determining the space between the bottom of the boards and the same.

Redirect examination:

Complainant has three hundred sixty-nine illuminated boards in Chicago.

There is a distinction between locations and boards. The conditions around boards reported by me do not represent all but a few of what I saw. I did not report all as it would have taken too much time.

The height of the illuminated boards is twelve feet, the height of the top over the ground is fifteen feet six inches. The ground
1082 under the boards which are illuminated is not in all cases level. I do not know whether the space between the bottom of all the illuminated boards and ground thereunder is always three and a half feet. I saw an illuminated board about a week ago at 43rd and Washington, but did not notice conditions on the ground behind the board. All of the forty-eight boards are not twelve feet high, some of them being ten feet.

The court ruled that the evidence of the complainant as to the distance behind the boards, at which light was reflected should stand only to the extent that the conditions are uniform.

I do not know the exact distance behind bill boards which light is reflected in all cases.

FRED W. RUBY, witness, testified for complainant:

That he is assistant general superintendent of the complainant company. He has general supervision over the erection and maintenance of bill boards. He has been in the business of building and maintaining bulletin boards for about twenty-five years.

That he has put up signs all over the United States running into the thousands for twenty-five years except for a short time during which he was manufacturing boards solely.

That he is familiar with the strength of material of bill boards.

That in the alley between State and Wabash under the
1083 elevated structures he saw refuse and a deposit being made on the side of building there in a vacant lot by a city employe.

That in lot in rear of 1610 Wabash he saw three deposits, garbage and rubbish behind the building.

I was with Mr. Beaver during two days while he was making inspections. I saw a number of other locations not testified to. Since the passage of the ordinance in question the boards built by the complainant have been of uniform type of construction. They are not exactly alike, varying slightly, depending upon their height. The posts shown on Exhibit 73 standing perpendicular are known as uprights. The long stringer running diagonally from the upright down to the anchor is called the main board. The dimensions of the uprights are 4x6. The anchor posts are of cedar usually and the braces and uprights are usually hemlock. The crosswise pieces on the anchor are called deadmen. The short braces are called slavers. The anchors are usually 6x6. The braces are usually 2x4 and 2x6. This is the uniform type of construction and the size. I do not know whether all the boards built by the complainant company since December 5, 1910, are built of the timbers and the sizes indicated on Exhibit 73. I have been employed by the complainant nine months and during that time the boards have been of this type of construction. Plat of board introduced in evidence and marked Complainant's "Exhibit 73." A board constructed as indicated by this plat will withstand a wind pressure of twenty-five pounds to the square foot. Wind must attain a velocity of sixty-seven miles an hour to produce a pressure of
1084 twenty-five pounds to the square foot on a structure constructed as shown on this plat. I have been erecting signs for twenty-five years without a casualty. Not one board has ever come down on account of lack of material or correctness of construction. Complainant has constructed boards as shown by this sketch. I do not know whether this construction has been approved by the building commissioner, but boards so constructed have been permitted to remain by the building commissioner, although I do not know whether he has ever inspected them.

Cross-examination:

Reports of boards blowing down have not come directly to me. I have put up one or two boards on Sheridan road for the Cusack Company. One of the boards on Sheridan road was blown down. In making the inspections of locations I saw several hundred con-

cerning which I did not testify. I do not know how many boards have been constructed in the last nine months, nor how many I have inspected. I do not know whether these boards have all been constructed with cedar posts, or that the braces and timbers were all of the same kind of wood. I do not know what the requirements of the ordinance are as to the different stresses permitted for different kinds of wood used. The safe limit of stress provided by the ordinance is twenty-five pounds to the square foot. I do not know what the safe limit of stress is with respect to different kinds of timber.

1085 Redirect examination:

The court, in overruling the objections to questions put to the witness as to the capability of such a structure as is shown on the sketch withstanding certain wind pressure without falling down, states that the witness has not been sufficiently qualified to permit an answer were there a jury in the case.

Recross-examination:

I drew this sketch.

I do not know how to figure the stress on a face board sign, except by my own formula. I cannot tell you what that formula is. The only way I could figure the strength of a wooden post in the ground is from what I have seen as to the required amount of wind that would break it. I determine the velocity of the wind from the government reports.

JOHN KRIPPNER, witness for complainant, testified:

That he is an architectural engineer for the City of Chicago; that he is able to figure the strength of any structure, and wood stresses. The strength of the structure shown on complainant's exhibit 73 cannot be determined from what appears thereon. The unit stresses can be figured by the safety of the sign. Among the missing things shown on the plat is the size of the anchor posts; nor is their depth in the ground shown; nor whether they are forced in or the ground first excavated; nor are the size of the planks, their length and thickness shown. With these things
1086 missing, the safety of such a board cannot be determined. Neither is the size of the spikes used shown. The strength of a sign of this kind depends a great deal on the connections and the strength of those connections are not plainly shown. The anchorage of the rear struts must also be known.

JOHN A. MURPHY, witness for complainant, recalled, testified:

That thirty-penny spikes are used in fastening the structure; that the anchor posts extend four feet in the ground and that the ground is excavated and the anchor placed in and the earth put around the anchor; that deadmen are put on the anchor a foot from the top; that the deadmen are usually ten or twelve inches long and 2x4; that the anchors are usually of cedar; that the uprights are 4x6 hemlock; that pine is seldom used.

JOHN KRIPPNER, witness for complainant, recalled and testified:

That he can figure the strength of the structure shown on the plat with the information given by the last witness; that it would take at least two hours; that he would figure out the strength by morning.

1087 FRANK W. BEAVER, witness for complainant, recalled for further cross-examination, testified:

That he did not report the conditions found about the complainant's boards to the police; that he has seen these conditions before the inspections made concerning which he has testified, but has never reported them to the police.

HANS SCHADELICK, witness called by defendants, testified:

That he is an illuminating engineer and has been employed by the city six years; that he has taken the course in electrical engineering at the Armour Institute; that direct rays of light flow in a straight line; that light from any source throws its direct rays in a straight line; that an electric light extended eighteen inches above and six feet in front of an opaque structure, twelve feet high, the bottom of which is three and one-half feet above the level of the ground, would throw direct rays of light 1.55 feet behind the plan of the opaque structure extended to the ground; that direct rays of light passing over the top of such a structure would strike the ground behind it at the nearest point sixty-two feet back; that if the opaque structure were ten feet instead of twelve feet high, the light at the bottom would extend about .2 of a foot further back and the light over the top would strike about eight feet nearer such a structure. The witness is familiar with the amount of light diffused from an eighty candlepower electric globe; that the
1088 direct rays of light from such a source would send some indirect light slightly further; that such a structure so lighted would cause a shadow to exist behind the same.

Cross-examination:

With such a structure and such lights the light between the lines of the direct rays would not be as bright as the space where the direct rays fall. The space between the direct rays will have the same illumination whether the lights in front are lit or not. The reflected light from the direct rays would extend only a couple of inches. The space between such direct rays would be unappreciably lighter with the lights on than with the lights off. It could not be noticed, although it would be slightly lighter. If the ground is black dirt there would be no reflection from the direct rays. If the ground were white-washed, there would be some reflection. With the reflector on the lights the direct rays would extend about one-tenth of a foot further back. The number of lights in front of such structure would make no difference. In a room with no light except emanating from a cone-shaped reflector sending the

rays towards the ceiling, the whole room would be lighted from the reflection of light on the walls. If the walls were black there would be no light except where the direct rays flowed from the reflector. In this case there would be no light in any other part of the room. Black walls are used to prevent reflection of light in fratometer room.

1089 Redirect examination:

Standard authorities supporting my observations are Wickenden, Le Moyne and Lee, Steinmetz on light, radiation and heat. The only refraction or reflection of light in the air is from dust and fog.

JOHN J. NAUGHTON, witness for defendants, testified:

That he is sergeant of police of the City of Chicago; that he has been stationed in the office of the general superintendent of police since July, 1911; that in the course of his duties he examines the complaints and reports of complaints sent to the police; that he has looked through the reports in the office for years; that no complaint is shown as having been made by the Cusack Company as to the presence of any substances on lots upon which they maintain bill boards; that no reports have been made by the American Posting Service Company or the Heiner Sign Works Company.

Cross-examination:

Practically every complaint that has come to the office of the general superintendent of police for the past two years has been examined by him; that every complaint that is made is on file; that they are put on file by himself; that there may be complaints made at other offices which he knows nothing of.

1090 JOHN KRIPPER, witness for complainant, recalled, testified:

That he figured the strength of the structures shown in Complainant's Exhibit 73. Whether this structure would withstand the wind pressure of twenty-five pounds depends upon the way it is anchored in the foundation. The design shown is not in keeping with standard engineering practice so far as the ground line is concerned. Letter of witness to complainant introduced in evidence and marked Complainant's "Exhibit 74" which states that the structure shown by Complainant's Exhibit 73 is designed within safe unit stresses in all particulars except as to the anchorage of the posts in the ground.

JAMES L. FYE, witness for complainant, testified:

That he is an architectural engineer, graduated from the Massachusetts Institute of Technology. He examined the Plaintiff's Exhibit 73. The structure shown thereon with the assumption that the anchor post is of cedar and five feet long, four feet in the ground; that spikes are thirty penny nail and that timbers are hemlock, would withstand a wind pressure of twenty-five pounds to

the square foot; that he knows the requirements of the ordinance and that such a structure would withstand such a wind pressure without stretching the material beyond the limit of stress given by the ordinance.

1091 Cross-examination:

The wind pressure such a structure would stand would not vary in case the anchorage posts were imbedded in cement or sand; that it would not take a greater wind pressure to throw a board over with the pressure applied from the front than with the pressure applied from the back; that such a structure without any braces would withstand no wind pressure; that whether the anchorage posts were imbedded in sand or cement would make a difference as to the amount of wind pressure the same could withstand; that he could tell the amount of wind pressure a structure would withstand without knowing the character of the soil in which the anchorage was imbedded.

Direct examination:

That in testifying concerning the structure shown on Complainant's Exhibit 73 the character of the soil found in Chicago was taken into consideration and assumed.

Cross-examination:

That the soil in the City of Chicago varies; that the amount of wind pressure such a structure as is shown on Complainant's Exhibit 73 would withstand would vary depending upon the soil in which the braces were imbedded.

Redirect examination:

That whatever the kind of soil such a structure would withstand twenty-five pounds to the square foot.

1092–1094 Recross-examination:

That a difference as to the amount of wind pressure such a structure could withstand would exist if the soil in which the braces were imbedded was loose or was not tamped down; that the answers to the questions were based upon the assumption that this work was properly done.

Sections 1424, 1425, 1426, 1427, 1428, 1433, 1435 and 1437 of the Chicago code of 1911 introduced in evidence by the complainant.

FRANK W. BEAVER, witness for complainant, recalled, testified:

That the Thomas Cusack Company paints and erects boards for various real estate companies, such as for sale signs and lease signs; that it builds and sells commercial signs and bill boards and electric signs for others; that this business amounts to between $25,000 and $30,000 a year.

1095 [Endorsed:] File No. 24,727. Supreme Court U. S., October term, 1915. Term No. 463. Thomas Cusack Co., Pl'ff in Error, vs. The City of Chicago et al. Stipulation of counsel as to printing of record. Filed August 5, 1915.

Endorsed on cover: File No. 24,727. Illinois Supreme Court. Term No. 126. Thomas Cusack Company, plaintiff in error, vs. The City of Chicago, Carter H. Harrison, Mayor of the City of Chicago, and Henry Ericsson, Commissioner of Buildings of the City of Chicago. Filed May 14th, 1915. File No. 24,727.

FILED
DEC 18 1916
JAMES D. MAHER
CLERK

No. 126.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1916.

THOMAS CUSACK COMPANY,
Plaintiff in Error,

vs.

THE CITY OF CHICAGO, CARTER H. HARRISON, MAYOR OF THE CITY OF CHICAGO, AND HENRY ERICSSON, COMMISSIONER OF BUILDINGS OF THE CITY OF CHICAGO,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Brief and Argument for Plaintiff in Error.

JOHN S. HUMMER,
ATTORNEY FOR PLAINTIFF IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

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BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR

STATEMENT OF THE CASE.

This case was commenced by a bill in equity filed by the plaintiff in error in the Superior Court of Cook County, Illinois, praying for a permanent injunction restraining the City of Chicago and its officers from enforcing one of the provisions,—Section 707,—of an ordinance of said City regulating the construction and maintenance of bill-boards, sign-boards and signs, which section of said ordinance is as follows:

707. Frontage Consents Required. It shall be unlawful for any person, firm or corpor-

ation to erect or construct any billboard or signboard in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the property on both sides of the street in the block in which such billboard or signboard is to be erected, constructed or located. Such written consents shall be filed with the Commissioner of Buildings before a permit shall be issued for the erection, construction or location of such billboard or signboard. (Record 36).

Note. *The remaining provisions of the ordinance are here set forth in full for convenience of reference, but no question is raised as to the validity of any part of the ordinance except Section 707.*

"Article XXIII.

Billboards, Signboards, Signs and Fences.

695. Billboards and Signboards on Buildings—Construction—Height.) No billboard or signboard shall be erected or placed upon or above the roof of any building or structure within the limits of the City of Chicago; and it shall be unlawful for any person, firm or corporation to attach any billboard or signboard to the front, sides, or rear walls of any building, unless the same shall be placed flat afiainst the surface of the building and safely and securely anchored or fastened thereto in a manner satisfactory to the commissioner of buildings.

696. Size and Construction of Billboard and Signboards Erected Within Fire Limits Otherwise Than on Buildings.) The face of billboard or signboards erected within the fire limtis as now defined or as they may hereafter be defined by ordinances of the City of Chicago, other than signboards and billboards referred to in section 698 hereof, shall not exceed twelve feet in height, and the same shall be constructed of galvanized iron or some other equally incombustible material, except that the stringers, uprights and braces thereof may be of wood. All such billboards or signboards shall be securely anchored or fastened so as to be safe and substantial.

697. Height and Distance From the Ground of Billboards and Signboards Erected Within the Fire Limits.) It shall be unlawful for any person, firm or corporation to construct or erect any billboard or signboard, except those specified in section 698 hereof, within the fire limits of the City of Chicago at a greater height than fifteen feet six inches above the level of the adjoining street. Where the grade of the adjoining street or streets has not been established, no billboard or signboard shall be constructed or erected at a greater height than fifteen feet six inches above the level of the ground upon which such billboard or signboard is erected. The face of every billboard or signboard within the fire limits shall be of incombustible material, but the supports and framework of the same shall be of wood. The base of the billboard or signboard shall, in all cases, be at least three feet six inches above the level of the adjoining street. If, however, the level of the ground where the billboard or signboard is to be erected is above the level of the street, then the bottom of the

face of the billboard or signboard must be at least three feet six inches above the level of the ground at the point where the board is to be erected. Every said billboard or signboard must be constructed and located in accordance with the provisions of this article and shall be subject to the approval of the commissioner of buildings.

698. Wooden Billboard or Signboard—Construction—Size—Exceptions.) Billboards or signboards not exceeding twelve square feet in area may be built of wood or other combustible material, and such billboards or signboards shall be exempt from the provisions of this article, except that they shall be safely and securely anchored or fastened and shall be so constructed, anchored and fastened that they will withstand the wind pressure specified in section 703 of this article. It shall be unlawful to erect any such billboard or signboard exceeding twelve square feet in area before a permit therefor has been procured from the commissioner of buildings, the application for which must include the plans and specifications of such board and its supports and fastenings. No such board or boards shall be more than twelve feet high.

699. Billboards and Signboards Erected Outside the Fire Limits—Construction—Size.) It shall be unlawful for any person, firm or corporation to construct, erect or locate any billboard or signboard, except those specified in section 698 hereof outside the fire limits of Chicago at a greater height than fifteen feet six inches above the level of the adjoining street. Where the grade of the adjoining street has not been established, no billboard or signboard

shall be constructed or erected at a greater height than fifteen feet six inches above the level of the ground upon which such billboard or signboard is erected. The base of the billboard or signboard shall, in all cases, be at least three feet six inches above the level of the adjoining street. If, however, the level of the ground where the billboard is to be erected is above the level of the street, then the bottom of the face of the billboard or signboard must be at least three feet six inches above the level of the ground at the point where the board is to be erected. The braces, supports and face of the billboard or signboard outside the fire limits may be of wood, unless the billboard or signboard shall be erected or located so that any part of the face of said board is nearer than ten feet to any building or structure in which case the face of the same shall be constructed with incombustible material. Every such billboard or signboard shall be safely and securely constructed, anchored, fastened and located in accordance with the provisions of this article and shall be subject to the approval of the commissioner of buildings.

700. Provisions of this Article Shall Apply to Other Similar Structures.) The provisions of this article shall apply to other similar structures of like size and construction without regard to their use whether erected on or near the surface of the ground or anchored to, or fastened to any building or structure.

701. No Billboard of Signboard Shall Be Erected Without Permit.) No billboard or signboard or other similar structure such as is described in this article

shall be erected or maintained within the city unless a permit shall first have been secured by the person, firm or corporation desiring to erect or maintain such billboard or signboard from the commissioner of buildings to whom application for such permit shall be made; and such application shall be accompanied by such plans and specifications of the proposed billboard or signboard and location of same as are necessary to fully advise and acquaint the said commissioner with the construction of such proposed billboard or signboard. If the plans and specifications accompanying such application shall be in accordance with the provisions of this article, said commissioner shall thereupon issue a permit for the erection of such billboard or signboard upon the payment by the applicant of the fee as hereinafter fixed.

702. Alteration and Repair of Billboards and Signboards.) No material alteration of any billboard or signboard nor removal from one location to another shall be made except upon a written permit issued by the commissioner of buildings authorizing such alteration or removal; and such permit shall be issued upon application in writing made to such commissioner by the owner of such billboard or signboard or by the person in charge, possession or control thereof, accompanied by a plan of the proposed alterations or repairs to be made and a written statement covering the proposed removal from one location to another and its reconstruction in the new location, which said alteration and repairs or removal shall be made in accordance with the provisions of this article and the ordinances of the City of Chicago. Where such plans, specifications and

location are in compliance with the requirements of this article and are satisfactory to and approved by the commissioner of buildings, such commissioner shall issue a permit upon the payment of a fee therefor as hereinafter fixed; but such alteration shall not be construed to apply to the changing of any advertising matter of any billboard or signboard, nor the refacing of the framework supporting same.

703. Wind Pressure—Strength—Billboards Now Existing or Hereafter Constructed.) All billboards and signboards now in existence, or hereafter to be constructed, erected or maintained, shall be made, constructed, erected and maintained of sufficient strength to withstand a wind pressure of twenty-five pounds per square foot of surface without stressing the material beyond the safe limit of stress given elsewhere in this chapter.

704. Change in Existing Billboard and Signboards.) No surface billboard or signboard constructed or erected prior to the passage of this ordinance shall be maintained after six months from and after the passage of this ordinance where the height of such billboard or signboard exceeds seventeen feet, nor shall such billboard or signboard be maintained after such date, unless there is a clear space of at least three feet six inches above the level of the adjoining street. If, however, the level of the ground where the billboard or signboard is erected or maintained is above the level of the street then there must be a clear space of at least three feet between the bottom or face of the billboard or signboard and the level of the ground at the point where the billboard or signboard is erected or maintained.

705. Duty of Commissioner—Owner's Name to be Placed on Top of Billboard or Signboard—Annual Inspection.) It shall be the duty of the commissioner of buildings to inspect all plans and specifications submitted in connection with the erection or construction or the alteration or repair of any billboard or signboard and to approve same if the method of construction and provisions made for fastening, securing, anchoring and maintaining such billboards or signboards are such as will serve to protect the public and to render such billboards safe and substantial. It is further made the duty of the commissioner of buildings to exercise supervision over all billboards and signboards erected or being maintained under the provisions of this article; and to cause inspection by inspectors in his department of all such billboards and signboards to be made once each year and oftener where the condition of such boards so require; and whenever it shall appear to said commissioner that any such billboard or signboard has been erected in violation of this ordinance or is in an unsafe condition or has become unstable or insecure or is in such a condition as to be menace to the safety or health of the public, he shall thereupon issue or cause to be issued a notice in writing to the owner of such billboard or signboard or person in charge, possession or control thereof, if the whereabouts of such person is known, informing such person, firm or corporation of the violation of this ordinance and the dangerous condition of such billboard or signboard and directing him to make such alterations or repairs thereto, or to do such acts or things, as are necessary or advisable to place such billboard or signboard in a safe, substantial

and secure condition and to make the same comply with the requirements of this ordinance within such reasonable time as may be stated in said notice. If the owner or person in charge, possession or control of any billboard or signboard when so notified shall refuse, fail, or neglect to comply with and conform to the requirements of such notice, said Commissioner shall, upon the expiration of the time therein mentioned, alter, change, tear down or cause to be torn down such part of such billboard or signboard as is constructed and maintained in violation of this ordinance, and shall charge the expense to the owner or person in possession, charge of control of such billboard or signboard which shall be recovered from them by appropriate legal proceedings. If the owner of such billboard or signboard or the person in charge, possession or control thereof cannot be found, or his or their whereabouts cannot be ascertained, the Commissioner shall attach or cause to be attached to said billboard or signboard, a notice of the same import as that required to be sent to the owner or person in charge, possession or control thereof, where the owner is known; and if such billboard or signboard shall not have been made to conform to this ordinance and be placed in a secure, safe and substantial condition, in accordance with the requirements of such notice, within thirty days after such notice shall have been attached to such billboard or signboard, it shall be the duty of the Commissioner of Buildings to thereupon cause such billboard or signboard or such portion thereof as is constructed and maintained in violation of this ordinance to be torn down; provided that nothing herein contained shall prevent the Commissioner of

Buildings from adopting such precautionary measures as may be necessary or advisable in case of imminent danger in order to place such billboard or signboard in a safe condition, the expense of which shall be charged to and recovered from the owner of such billboard or signboard or person in charge, possession or control thereof in any appropriate proceedings therefor. No permit shall be issued to any applicant for permission to erect a billboard or signboard unless such applicant shall agree to place and maintain on the top of such billboard or signboard the name of the person or corporation owning same or who is in charge, possession or control thereof. It shall be the duty of the Commissioner of Buildings to require that the name of the person or corporation owning or in possession, charge or control of such billboard or signboard is placed upon such billboard or signboard forthwith upon the erection thereof and is kept thereon at all times such billboard or signboard is maintained; and in case the owner of such billboard or signboard or the person in charge, possession or control thereof shall fail or refuse to place and maintain such name on the same, they shall be subject to the penalty hereinafter provided for. Every person, firm or corporation engaged in the business of erecting billboards or signboards for the purpose of display advertising shall file with the Commissioner of Buildings within 90 days after the passage of this ordinance a full and complete report of the location and size of all existing billboards or signboards.

706. Fees for Permits and Annual Inspection—Indemnifying Bond.) (a) The fee to be charged for permits issued for the erection or construction

of billboards or signboards or for the alteration thereof shall be two ($2) dollars for each twenty-five lineal feet of billboard or signboard erected or altered. An annual fee shall be charged every person, firm or corporation as owner, or in possession, charge or control of any billboard or signboard for inspection of such billboards or signboards, which shall be thirty-five (35) cents for each twenty-five lineal feet of billboard or signboard, or fractional part thereof.

(b) Every person, firm or corporation engaged in the business of constructing and erecting billboards or signboards shall file with the City Clerk a penal bond, with sureties to be approved by the Commissioner of Buildings, in the sum of twenty-five thousand ($25,000) dollars, conditional that such person, firm or corporation shall faithfully comply with all the provisions and requirements of this ordinance with respect to the construction, alteration, location and safety of billboards or signboards and for the payment of the inspection fee required by said ordinance; and conditioned, further, to indemnify, save and keep harmless said City of Chicago and its officials from any and all claims, damages, liabilities, losses, actions, suits or judgments which may be presented, sustained, brought or secured against the City of Chicago or any of its officials on account of the construction maintenance, alteration or removal of any of said billboards or signboards, or by reason of any accidents caused by or resulting therefrom.

708. Penalty.) Any person, firm or corporation owning, operating, maintaining or in charge, possession or control of any billboard or signboard

within the city, who shall neglect or refuse to comply with the provisions of this article, or who erects, constructs or maintains any billboard or signboard that does not comply with the provisions of this article, shall be fined not less than twenty-five ($25) dollars nor more than two hundred ($200) dollars for each offense; and each day on which any such person shall permit or allow any billboard or signboard owned, operated, maintained or controlled by him to be erected, constructed or maintained in violation of any of the provisions of this article shall constitute a separate and distinct offense."

"711. Definition of word "block."] (Rec., 87.) Whenever a provision is made in this chapter that frontage consents shall be obtained for the erection, construction, alteration, enlargement or maintenance of any building or structure in any block, the word 'block,' so used, shall not be held to mean a square, but shall be held to embrace only that part of a street bounding the square, which lies between the two nearest intersecting streets, one on either side of the point at which such building or structure is to be erected, constructed, altered, enlarged, or maintained, unless it shall be otherwise specifically provided."

On May 8, 1913, plaintiff in error applied to the Commissioner of Buildings of the City of Chicago for, and was granted, a permit to construct a bulletin board about 200 feet in length on private property (being a tract of vacant land) which it had leased for that purpose, abutting upon Sheridan road, a public highway in said city.

Plaintiff had not obtained the consents of a ma-

jority of the owners of other property in the block where it proposed to, and subsequently did, erect said bulletin board, as provided for in Section 707 of said ordinance, and thereafter, on July 11, 1913, the Commissioner of Buildings of the City of Chicago served upon plaintiff in error a notice that unless the provision of the ordinance providing for obtaining the consent of other property owners in the block for the maintenance of said bulletin board was complied with within 48 hours, the bulletin board would be removed by the city fire department.

Plaintiff in error then filed its bill of complaint praying that the City of Chicago and its officers be enjoined from removing said bulletin board, and from enforcing the provisions of Section 707 of said ordinance, to which bill of complaint the defendants in error filed their answer.

The issue here is narrowed down to the question of the validity of the frontage consent provision of the ordinance—Section 707.

Plaintiff in error contended that the said section of the ordinance was invalid for the several reasons set forth in its bill of complaint, among them the following:

> "That said Section 707 is in violation of the Fourteenth Amendment to the Constitution of the United States, in that it constitutes a taking of plainiff in error's property without due process of law, and denies to the plaintiff in error the equal protection of the laws.
>
> That said Section 707 is in violation of the Fifth Amendment to the Constitution of the United States in that it in effect deprives plaintiff in error of its property without due process of law, and takes its property for public use without due compensation."

The defendants contended that the enactment of said Section 707 was a valid exercise of the police power of the City of Chicago, and did not violate the Fifth or Fourteenth Amendments to the Constitution of the United States.

The cause was heard by the chancellor in open court on oral testimony and documentary evidence and at the conclusion of the hearing the chancellor found the facts in accord with the allegations of the bill of complaint and adjudged said Section 707 to be unconstitutional, null and void, and entered a decree perpetually enjoining the City of Chicago and its officers from enforcing the provisions of said section. (Rec., 29-43.)

From that decree the defendants in error appealed to the Supreme Court of the State of Illinois, which court held said Section 707 to be valid and not in violation of either the Fifth or Fourteenth Amendments to the Constitution of the United States, and reversed the decree of the Superior Court of Cook County and remanded the cause to that court with directions to dismiss the bill of complaint for want of equity, from which decision Mr. Justice Dunn and Mr. Justice Cooke dissented. Their dissent appears in the reported case, *Cusack* v. *Chicago,* 267 Ill. 344, but through inadvertence is not shown in the printed record herein.

This writ of error is brought to review that decision of the Supreme Court of the State of Illinois.

SPECIFICATION OF ERRORS RELIED UPON.

1. Plaintiff in error contends that the Supreme Court of the State of Illinois erred in not holding that said Section 707, if enforced, would be a denial to plaintiff of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

2. That the said court erred in not holding that the enforcement of said Section 707 would constitute in effect a taking of plaintiff in error's property for a public use without compensation in violation of the Fifth Amendment to the Constitution of the United States.

3. That the said court erred in not holding that the enforcement of said Section 707 would in effect deprive plaintiff in error of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

Assignment of Errors (Rec., 70-71).

BRIEF OF ARGUMENT AND AUTHORITIES.

The right of the City of Chicago under its police powers to exercise a reasonable control over the construction and maintenance of billboards and other similar structures was not questioned by plaintiff in error, either in the trial court or in the Supreme Court of Illinois, and is not questioned here.

Notwithstanding the admission of that right which was made in express terms by plaintiff in error in brief and argument in the courts below, the opinion of the Supreme Court of Illinois is devoted almost exclusively to a discussion of the reasonableness in general of the ordinance of the city regulating billboards, and the power of the city to pass such ordinances. Plaintiff in error persistently urged upon the consideration of the Supreme Court of Illinois both on the original submission of the cause and in the petition for rehearing, the contention that Section 707 of the ordinance was in no sense regulatory but, without creating or fixing any standard by which such power is to be exercised, conferred upon one-half of the property owners of a residence block an arbitrary power to prohibit the construction of billboards in such blocks—regardless of the rights and interests of the owners of the other one-half—a power unrestrained in any manner whatsoever, and which could be exercised absolutely without regard to the safety, health, morals, comfort or welfare of the public.

The Supreme Court of Illinois disposed of this contention by stating in the opinion:

> "The ordinance is not unreasonable or oppressive because it requires the consent of a majority of the owners of property, within certain limits, on both sides of the street where such billboards are erected. In respect to occupations or structures the location and maintenance of which are subject to regulation under the police power of the municipality, a requirement of frontage consents of property owners, within reasonable limits, is a proper mode of exercising the power of regulation vested in the municipality. Ordinances of this general character have been upheld in regard to livery stables, in *City of Chicago* v. *Stratton*, 162 Ill. 494, in regard to dramshops in *Swift* v. *People*, 162 *id.* 534, and in respect to garages in the late case of *People* v. *Ericsson*, 263 *id.* 368. (Rec., 51.)"

We contend the Supreme Court fell into error by overlooking the controlling point in the case; that is, that the City of Chicago in adopting and enforcing said Section 707 *did not exercise* its power to regulate or control the construction and maintenance of billboards, signboards and signs, *but attempted to delegate* the right or power without restriction to the majority of the property owners in any residence block to subject the use to be made of their property by the minority owners in such block to the whims and caprices of their neighbors.

No standard is fixed by the ordinance or otherwise, by which the power thus attempted to be delegated to the majority owners is to be exercised, but such power is left to their unrestricted will.

Such attempted delegation of power to property owners has been condemned by this honorable court

on every occasion in which the question was presented for consideration, in language emphatic and unmistakable and upon grounds that are unanswerable.

The most recent case to our knowledge in which this court has passed on the question, is the case of *Eubank* v. *City of Richmond,* 226 U. S. 137.

In that case this court had under consideration the validity of an ordinance of the City of Richmond, Va., which provided that the owners of two-thirds of the property abutting on a street could establish a building line on the side of the square on which their property fronted, which line would be binding on all owners of property in such square or block.

A statute of the State of Virginia granted to cities the power, among others, to establish building lines, and the ordinance purported to be enacted pursuant to the power so granted.

The court, expressly withholding judgment as to the power of the city to establish building lines, held the ordinance invalid because it conferred upon a majority of the property owners in a block the right to limit the use of their property by the owners of a minority of property owners in such block.

In its opinion, this court said:

> "It (the ordinance) leaves no discretion in the committee on streets as to whether the street line shall or shall not be established in a given case. The action of the committee is determined by two-thirds of the property owners. In other words, part of the property owners fronting on the block determine the extent of use that other owners shall make of their lots, and against the restrictions they are impotent. This

we emphasize. One set of owners determine not only the extent of use but the kind of use which another set of owners may make of their property. In what way is the public safety, convenience or welfare served by conferring such power?

The statute and ordinance, while conferring the power on some property holders to virtually control and dispose of the property rights of others, creates no standard by which the power thus given is to be exercised; in other words, the property holders who desire and have authority to establish the line may do so solely for their own interest or even capriciously.

Taste (for even so arbitrary a thing as taste may control) or judgment may vary in localities indeed in the same locality. * * * One person having a two-thirds ownership of a block may have that power against a less number having a less collective ownership. If it be said that in the instant case there is no such condition presented, we answer that there is control of the property of the plaintiff in error by other owners of property, exercised under the ordinance, and makes it, we think, an unreasonable exercise of the police power."

In the case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, this court had under consideration an ordinance of the City of San Francisco which provided that it should be unlawful to establish, carry on or maintain the laundry business in the city in any building other than one constructed of brick or stone, without the consent of the Board of Supervisors. The Supreme Court of California held the ordinance valid on the ground that it vested a not unusual discretion in the Board of Supervisors to be exercised with a view to the protection of the public against the danger of fire, etc.

This court, in reviewing that decision, said:

> "We are not able to concur in that interpretation of the power conferred upon the supervisors. There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. They seem to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only as to places but as to persons. * * * The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will, it is purely arbitrary, and acknowledges neither guidance nor restraint."

Substantially the same reasons that were urged in justification of the ordinances in the *Eubank* and *Yick Wo* cases have been and probably will be again urged in the case at bar, viz.: that the ordinance here in question is a measure to protect the public against certain alleged evils. But the court will see that the ordinance here has precisely the same infirmities as those in the *Eubank* and *Yick Wo* cases. Whether the public receives the supposed protection depends not upon the occasion or necessity for protection, but upon the arbitrary unrestrained will of the owners of one-half or a majority of the property in the several blocks, that is to say, a majority is required to permit, but one-half can prohibit.

As a matter of fact it can scarcely be regarded as a question of protection for the other provisions of the ordinance provide full and complete protection. It is really a simple question of caprice.

Section 707 of the ordinance in the case at bar has not even the virtue of lodging in a public, re-

sponsible body the discretion of determining whether or not billboards may be constructed in certain localities, and herein is even more vicious than the ordinance which this court condemned as invalid in the *Yick Wo* case.

If, as alleged by defendant in error, a billboard, while not itself a nuisance, is the cause of the existence of nuisances detrimental to the public health, morals, safety, welfare and comfort, assuredly it cannot be said that a billboard is any less the cause of the existence of nuisances detrimental to the public, by reason of the fact that the owners of property in the block where it is erected give their consent to its construction.

That the abatement or prevention of such supposed nuisances was not in fact the object and purpose of said Section 707 is plain from its comprehensive terms.

Under that section the owner of a building in a block such as referred to therein could not attach a signboard or billboard to the side wall of his building without the consent of owners of a majority of the other property in the block, though a signboard or billboard so placed could not possibly have the remotest tendency to cause any of the alleged evils against which the ordinance is said to be directed.

The owner of a vacant lot could not erect thereon a "For Sale" sign with a surface area exceeding 12 square feet, without first obtaining the consent of his neighbors.

The owner of property in such locality might, however, without the consent of adjoining owners, erect upon his lot a board fence in size and every

other respect exactly like a billboard, and without complying with the billboard regulations as to safety, etc., which would cause every alleged evil said to be caused by billboards; yet if, after the erection of such fence, he desired to paint thereon or fasten thereto an advertising sign, he could do so only with the consent of a majority of the owners of other property in the block.

Without extending the illustrations further, we think it apparent that the protection of the public health, safety, morals, comfort or welfare was not the purpose and object of Section 707 of the ordinance, but that theory has originated since the passage of the ordinance, in the search for some theory on which that section might be justified.

The City Council of Chicago in the exercise of its right of regulation adopted a most stringent ordinance regulating the manner of the erection and maintenance of billboards and signs, the materials of their construction, careful inspection, etc., and having carefully and minutely prescribed how such signboards and signs should be erected and maintained so as not to injure the public health, safety, morals, comfort or welfare, then says to the owner of property in certain places that his right to erect or maintain on his property such a structure in accordance with the prescribed regulations is prohibited unless he obtains the consent of the owners of adjoining property, which consent may be given or refused through any whim, caprice, enmity or without any reason whatever.

As a concrete example of the operation of Section 707, suppose A is the owner of 51 per

cent. of the frontage in such a block as referred to in said section, and B is the owner of the remaining 49 per cent. In such case A may erect such billboards and signs upon his property as he sees fit, wholly regardless of B's wishes, but B could not make the same use of his property without the consent of A.

We submit that a case can scarcely be imagined that furnishes a clearer example of a denial of the equal protection of the law.

Prior to the decision of the case at bar the Supreme Court of Illinois held to the same rule as stated by this court in the *Eubank* case, and refused to uphold an ordinance that required a property owner to obtain the consent of owners of adjoining property as a prerequisite to the use of his property for advertising purposes.

Chicago v. *Gunning System*, 214 Ill. 628.

The ordinance so held to be invalid is in part as follows:

> "Section 4. No such sign or billboard shall be erected upon or along any boulevard or pleasure driveway, or in any streets where three-quarters (¾) of the buildings in such street are devoted to residence purposes only, unless the persons desiring to erect such sign or billboard shall first have secured the consent, in writing, of three-quarters (¾) of the residence and property owners on both sides of the street in the block where it is desired to erect such sign or billboard."

Ordinance in the case at bar:

> "707. *Frontage Consents Required.* It shall be unlawful for any person, firm or corporation to erect or construct any billboard or signboard in any block on any public street in which

> one-half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the property in which such billboard or signboard is to be erected, constructed or located. Such written consents shall be filed with the Commissioner of Buildings before a permit shall be issued for the erection, construction or location of such billboard or signboard."

In the *Gunning* case, several provisions of the ordinance then under consideration were held invalid for various reasons and the court, in specifically holding the section above quoted to be invalid, said:

> *"It seems to be an arbitrary restriction on the part of the city, depriving an individual property owner of the use of his property as he may choose, without any showing that such use would be injurious to others in the same vicinity."*

The above decision was cited with approval by the Supreme Court of Missouri in the case of *Gunning* v. *St. Louis*, 235 Mo. 99, in which that court said:

> "In the case of *Chicago* v. *Gunning System*, 214 Ill. 618, the Supreme Court of Illinois held the ordinance there under consideration void because it absolutely prohibited the erection of all billboards along any boulevard or pleasure drive or along any street where three-fourths of the buildings are residences, without the consent in writing of at least three-fourths of the residents and property owners on both sides of the street in the block where the board is to be erected. That decision was sound both upon principle and authority. The prohibition did not depend upon the question of public safety, but solely upon the pleasure of three-fourths of the property owners residing along the street."

The validity of an ordinance requiring frontage

consents for the erection and maintenance of bill-boards was before the Supreme Court of Colorado in the case of *Curran* v. *Denver,* 47 Colo. 221, where that court in disposing of the question said:

> "Nor can the governing body of a municipality commit the exercise of its legislative discretion to property owners, or other private persons. Indeed this feature of the ordinance is admitted by counsel to be invalid, and was so held by the trial court. Neither can the city entrust such power to the caprice of any of its officers, nor can it reserve to itself in its administrative, rather than its legislative capacity, an absolute or despotic power to grant or refuse permits of the character in question in particular cases, and in the absence of, or without reference to prescribed and duly enacted rules and regulations."

There has been no case to our knowledge where a requirement for frontage consents for the erection and maintenance of bill-boards has been sustained by any court.

We respectfully submit that the decisions of this court in the *Eubank* and *Yick Wo* cases are conclusive of the one and only question presented for review by this writ of error and that the Supreme Court of Illinois erred in not holding Section 707 of said ordinance to be invalid and in violation of the plaintiff in error's constitutional rights in the enjoyment of its property, and the judgment of that court should be reversed.

Respectfully submitted,

JOHN S. HUMMER,
Attorney for Plaintiff in Error.

James E. McGrath
of Counsel

FILED
DEC 15 1916
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1916.

No. 126

THOMAS CUSACK COMPANY,
Plaintiff in Error,

vs.

THE CITY OF CHICAGO, CARTER H. HARRISON, MAYOR OF THE CITY OF CHICAGO, AND HENRY ERICSSON, COMMISSIONER OF BUILDINGS OF THE CITY OF CHICAGO,
Defendants in Error.

In Error to the Supreme Court of the State of Illinois.

Brief and Argument for Defendants in Error.

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CHAMPLIN LAW PRINTING CO.

SUBJECT INDEX.

AUTHORITIES REFERRED TO.

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Defendants in Error.

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Brief and Argument for Defendants in Error.

Plaintiff in error confines its brief and argument to a discussion of the constitutionality of that part of section 707 of the Chicago Code of 1911, which permits the erection of bill boards of over 12 square feet in surface area in blocks in which one-half of the buildings on both sides of the street are used exclusively for residence purposes, upon obtaining the consent in writing of the owners or their authorized agents owning a majority of the frontage of the property on both sides of the street in such block. The term "block" is defined by Sec. 711 in Chicago Code of 1911 (Printed Record, 87), as that part of

a street which lies between the two nearest intersecting streets one on either side of the point at which a structure is to be located.

We contend that the only federal question, if any, involved in this proceeding is the validity of the provision of section 707 (Printed Record, 36), which prohibits bill boards over 12 square feet in area in blocks in which one-half of the buildings on both sides of the street are used exclusively for residence purposes, and for the purpose of presenting to the court the considerations which sustain this provision as a proper exercise of the police power we discuss the pleadings, the evidence and authorities which support our contention that this provision of the ordinance is a proper classification and operates uniformly; and that bill boards falling within the terms of the ordinance are nuisances.

We further contend that the provision of the ordinance objected to by plaintiff in error, which requires frontage consents, does not involve any federal constitutional question, and that on plaintiff in error's contentions this writ of error should be dismissed for want of jurisdiction.

On the jurisdictional question we call the court's attention to the fact that the pleadings and evidence show plaintiff in error's interest so far as this ordinance is concerned only to be that of an advertising company owning no property upon which its boards are erected, but maintaining them under revocable leases, and that plaintiff in error neither alleged nor introduced evidence to the effect that the frontage consents provided for by the ordinance could not be secured by it.

The Pleadings.

The bill filed by plaintiff in error alleges that the occupation of lots with the bill boards erected since the passage of the ordinance in question, without obtaining the consent of the property owners, as required by the ordinance, was under leases made with the owners of the lots (Printed Record, 2).

There was no allegation in the bill that the complainant owned the property upon which any of its bill boards are maintained.

There was no allegation in the bill that complainant made any effort to comply with the provision of the ordinance or was unable to procure consents as required by it.

Defendants in their answer (Printed Record, 20-26) aver that said ordinance was passed pursuant to express legislative authority and is a proper exercise of the police power of the City of Chicago and State of Illinois; that bill boards which fall within the provisions of said ordinance are dangerous to the public health, safety, morals, welfare and comfort in that they afford protection to disorderly persons who conceal themselves behind the bill boards; that the space behind the bill boards is used in such manner as to create nuisances by reason of the shelter and protection afforded by the same; that said bill boards cause the accumulation of inflammable material, therefore making imminent the danger of fires; that said bill boards are of such character that the regulation of their location as made by the aforesaid ordinance is proper; that said bill boards are temporary structures. Defend-

ants also deny that the ordinance is unconstitutional, or that it is unjust, discriminatory, oppressive or unreasonable.

Evidence.

The evidence shows that the bill boards of plaintiff in error were erected under leases made with owners of lots after the ordinance in question was passed (Printed Record, 80-82): that the leases made by plaintiff in error contained a provision that same could be cancelled by the Cusack Company and rent for unexpired term should be refunded in case the City of Chicago passed any ordinance restricting the size or location of signs or bill boards (Printed Record, 81); that deposits of various kinds which create nuisances exist behind bill boards erected on the ground; that said bill boards have afforded protection to law breakers and that fires have started from the accumulations about bill boards; that the accumulations about bill boards are of such character as to be prejudicial to the health of people living near the same; that burglars have entered buildings from the side of bill boards away from the street; that in alleys and behind structures various kinds of refuse and other deposits of an unsanitary character exist, but in most instances such refuse and deposits are found behind some opaque structure; that the bill boards of the complainant which are illuminated do not light the space behind said boards except for a distance of about two feet under the boards; that residence territories are not afforded as complete police and fire protection as business localities; that

in residence localities more women and children unescorted use the streets; that said bill boards in said residence localities have been used as a shield by persons insulting women and children; that residences are not equipped with fire fighting apparatus and are afforded less fire protection than business buildings which contain fire fighting apparatus.

The Supreme Court of the State of Illinois in this case held (Printed Record, 46-51) that the following evidence offered by defendants was erroneously refused, to wit: First, that residences and residence districts are not so well protected with fire extinguishing apparatus as are business buildings and districts, it having been shown by the evidence that combustible material accumulated and lodged against the base of bill boards had started fires; second, that residence districts are not offered as full police protection as other districts in the city of Chicago, it having been shown that bill boards offered a protection to disorderly and law-breaking persons. Regarding the evidence the Supreme Court of Illinois said (Printed Record, 49-50):

> "It did, however, appear from the testimony that women and children are on the streets, unaccompanied in larger numbers and more frequently in residence districts than in other places, and that the crimes against women and children the most frequent are indecent exposure and offenses against the person. It is shown by the testimony that the two elements contributing to crime in cities are, in the order of their importance; first, absence of police: and, second, darkness. It was shown by appellee that in some instances lights were maintained upon the front surface of its bill boards, but in answer to this it was shown that the

> space behind the boards remained dark, and that the rear was even darker than it would have been if there were no lights at all. It was shown that nuisances were permitted to exist in the rear of surface bill boards, and physicians testified that deposits found behind bill boards breed disease germs, which may be carried and scattered in the dust by the wind and by flies and other insects. It was shown that dissolute and immoral practices were carried on under the cover and shield furnished by these bill boards."

There was no evidence to show that the complainant made any lease with the owners of property for the erection of bill boards in the prohibited localities prior to the passage of the ordinance, nor that the complainant had made any contract with advertisers for showings in the localities prohibited by the ordinance until after its passage.

There was no evidence that complainant was unable to procure consents as required.

There was no evidence that the complainant owned the property upon which any of its bill boards are erected.

The evidence introduced by the defendants was for the purpose of showing that the bill boards in such prohibited localities were nuisances.

Defendants in error contend that in residence blocks, where women and children unescorted, more frequently use the streets, where there are fewer policemen and less fire protection and where the inhabitants of the City of Chicago must seek repose and quiet, the maintenance of bill boards may be prohibited.

Defendants in error contend further that the ordinance must be treated as a statute and cannot be held to be unconstitutional as taking private property without compensation.

BRIEF OF ARGUMENT.

I.

(a) THIS WRIT OF ERROR SHOULD BE DISMISSED FOR WANT OF JURISDICTION, AS THERE IS NO SHOWING THAT PLAINTIFF IN ERROR COULD NOT HAVE SECURED THE FRONTAGE CONSENTS WHICH WOULD HAVE ENTITLED IT TO A PERMIT FOR THE ERECTION AND MAINTENANCE OF ITS BILL BOARDS, P. 12.

Gundling v. *Chicago*, 177 U. S. 183, 186.

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City of Rochester v. *West*, 164 N. Y. 510.

Whitmier v. *City of Buffalo*, 118 Fed. 773, 775.

Crowley v. *Christensen*, 137 U. S. 86, 91.

Wilson v. *Eureka City*, 173 U. S. 32.

Fischer v. *St. Louis*, 194 U. S. 361, 370.

City of Chicago v. *Stratton*, 162 Ill. 494, 500, 504.

Chicago v. *Gunning System*, 214 Ill. 628, 642.

Swift v. *The People*, 162 Ill. 534, 542.

Martens v. *The People*, 186 Ill. 314, 317.

Harrison v. *The People,* 195 Ill. 466, 472.
Fish v. *McGann,* 205 Ill. 179, 187.
People v. *Griesbach,* 211 Ill. 35, 40.
People v. *Ericsson,* 263 Ill. 368, 373.
People v. *Village of Oak Park,* 266 Ill. 365, 367.
Lieberman v. *Van De Carr,* 199 U. S. 552, 562.

(c) PLAINTIFF IN ERROR CAN NOT URGE THAT THE FRONTAGE CONSENT PROVISION OF THE ORDINANCE IS INVALID BECAUSE OF CONJECTURAL RESULTS FROM ITS OPERATION, THERE BEING NO SHOWING MADE THAT THE PROVISION IN FACT OPERATED IN THE MANNER COMPLAINED OF, P. 26.

Lieberman v. *Van De Carr,* 199 U. S. 552, 562.
Sligh v. *Kirkwood,* 237 U. S. 52, 61.

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Hurd's Revised Statutes of Ill., 1913, Chap. 24, Par. 696.
Cusack Co. v. *City of Chicago,* 267 Ill. 344, 349, Printed Record, 46.
Reinman v. *Little Rock,* 237 U. S. 171, 176.
Fischer v. *St. Louis,* 194 U. S. 361, 369.

(e) CONSTRUCTION OF SECTION 707 OF THE ILLINOIS SUPREME COURT AS PROHIBITING BILL BOARDS IN RESIDENCE BLOCKS IS CONCLUSIVE, P. 35.

II.

(a) BILL BOARDS ARE OF SUCH A CHARACTER THAT THE CONTROL OF THEIR LOCATION IS A PROPER EXERCISE OF THE POLICE POWER, p. 36.

State v. *Staples*, 157 N. C. 637, 638.

In re Wilshire, 103 Fed. 620, 623.

City of Chicago v. *Gunning System*, 214 Ill. 628, 639, 640, 642.

Gunning Advertising Company v. *City of St. Louis*, 235 Mo. 99, 145.

(b) STRUCTURES AND BUSINESSES NOT NUISANCES PER SE AND SUBJECT TO TOTAL LEGISLATIVE SUPPRESSION MAY BY REASON OF THEIR LOCATION OR INHERENT ATTRIBUTES BE PROHIBITED UNDER CERTAIN CIRCUMSTANCES AND IN PARTICULAR LOCALITIES, AND THE PROHIBITION OF BILL BOARDS IN RESIDENCE BLOCKS, AS DEFINED BY THE ORDINANCE UNDER CONSIDERATION, IS VALID, p. 40.

City of Chicago v. *Gunning System*, 214 Ill. 628, 639, 640.

Welch v. *Swasey*, 214 U. S. 91, 107.

People v. *Ericsson*, 263 Ill. 368, 372.

City of Chicago v. *Stratton*, 162 Ill. 494, 501.

Ex Parte Quong Wo (1911), 161 Cal. 220, 230.

Ex Parte Hadacheck, 165 Cal. 416, 419, 420.

Hadacheck v. *Sebastian*, 36 Sup. Ct. Rep. 143, 145.

Reinman v. *Little Rock*, 237 U. S. 171, 176.

(c) THE LEGISLATIVE BRANCH OF THE GOVERNMENT HAVING BY THE ORDINANCE IN QUESTION DETERMINED BILL BOARDS IN RESIDENCE DISTRICTS TO BE INJURIOUS TO THE HEALTH, SAFETY, MORALS AND WELFARE OF THE PEOPLE, THE COURTS WILL NOT INTERFERE IF THERE IS A BASIS FOR SUCH DECISION, P. 52.

Laurel Hill Cemetery v. *San Francisco*, 216 U. S. 358, 365.

Armour & Co. v. *North Dakota*, 36 Sup. Ct. Rep. 440, 441.

Ex parte Hadacheck, 165 Cal. 416, 420.

ARGUMENT.

The ultimate question for determination in this case is the validity of section 707 of the Chicago Code of 1911 (Printed Record, 36), which provides as follows:

> "707. *Frontage Consents Required.* It shall be unlawful for any person, firm or corporation to erect or construct any bill board or sign board in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the property in which such bill board or sign board is to be erected, constructed or located. Such written consents shall be filed with the commissioner of buildings before a permit shall be issued for the erection, construction or location of such bill board or sign board."

The term "block" as used in this ordinance is defined by section 711 of the Chicago Code of 1911 (Printed Record, 87), as not meaning a square, but only "that part of a street bounding the square which lies between the two nearest intersecting streets, one on either side of the point at which the structure is to be erected."

Section 700 of the Chicago Code of 1911 (Printed Record, 33) provides as follows:

> "Provisions of This Article Shall Apply to Other Similar Structures.—The provisions of this article shall apply to other similar structures of like size and construction without regard to their use whether erected on or near the surface of the ground or anchored to, or fastened to any bill board, building or structure."

We contend that the City of Chicago could legally prohibit the erection of bill boards and similar structures of over 12 square feet in surface area in blocks as defined by sections 707 and 711 of the Chicago Code of 1911; that, having the power to prohibit, it could designate conditions under which bill boards could be maintained; that the frontage consent provisions have been recognized as valid and held not to be a delegation of legislative authority for many years and in many cases by the Supreme Court of the State of Illinois, and that this provision does not present a federal question in the case at bar; and that section 707 is constitutional and valid.

I.

THE FRONTAGE CONSENT PROVISION OF SECTION 707 OF THE CHICAGO CODE OF 1911 DOES NOT PRESENT A FEDERAL QUESTION, AND THIS WRIT OF ERROR SHOULD BE DISMISSED FOR WANT OF JURISDICTION, AS THERE IS NO SHOWING THAT PLAINTIFF IN ERROR COULD NOT HAVE SECURED THE FRONTAGE CONSENTS WHICH WOULD HAVE ENTITLED IT TO A PERMIT FOR THE ERECTION AND MAINTENANCE OF ITS BILL BOARDS. THE FRONTAGE CONSENT PROVISION OF THE ORDINANCE IS VALID AND PLAINTIFF IN ERROR CANNOT URGE ITS INVALIDITY BECAUSE OF CONJECTURAL RESULTS FROM THE OPERATION OF THE PROVISION, THERE BEING NO SHOWING MADE THAT THE PROVISION IN FACT OPERATED IN THE MANNER COMPLAINED OF.

The validity of the ordinance, so far as it prohibits bill boards in the territories defined, will be discussed hereafter.

(a) This writ of error should be dismissed for want of jurisdiction, as there is no showing that plaintiff in error could not have secured the frontage consents which would have entitled it to a permit for the erection and maintenance of its bill boards.

In the case at bar, plaintiff in error cannot properly claim that the property owners in the blocks in which bill boards of over 12 square feet in surface area are prohibited would discriminate in permitting the erection of such bill boards therein for the reason that in this case there is no evidence or allegations in the pleadings to this effect. Plaintiffs in error do not even allege, nor does the evi-

dence show, that they attempted to secure frontage consents. It is not shown that plaintiff in error owned the property upon which its bill boards would be erected. The bill and evidence show that plaintiff in error erected and maintained bill boards only under leases, which contain a provision (Printed Record 81) that:

> "In case the City of Chicago shall pass any ordinance restricting the size or location of signs or bill boards, or requiring any license fee thereon, then this lease may at the option of said Thos. Cusack Company be terminated at any time, and upon said termination any rent paid by said Thos. Cusack Company for the unexpired term of this lease shall be rebated to it by the other party hereto."

In view of this situation, we contend that there is no federal question involved in this proceeding, and, therefore, that the writ of error should be dismissed.

On the foregoing point we quote from the case of *Gundling* v. *Chicago*, 177 U. S. 183, in which Justice Peckham says, at page 186:

> "It seems somewhat doubtful whether the plaintiff in error is in a position to raise the question of the invalidity of the ordinance because of the alleged arbitrary power of the mayor to grant or refuse it. He made no application for a license, and of course the mayor has not refused it. *Non constat*, that he would have refused it if application had been made by the plaintiff in error. Whether the discretion of the mayor is arbitrary or not would seem to be unimportant to the plaintiff in error so long as he made no application for the exercise of that discretion in his favor and was not refused a license."

(b) The frontage consent provision of the ordinance is valid and it does not present a federal question.

In the case of *City of Rochester* v. *West*, 164 N. Y. 510, an ordinance prohibiting the erection of bill boards exceeding six feet in height, except with permission of the common council after notice in writing by the applicant for a permit to the owners, occupants or agents of all houses and lots within a distance of 200 feet from where such bill board is to be erected, was sustained.

In the case of *Whitmier* v. *City of Buffalo*, 118 Fed. 773, an ordinance prohibiting the erection of bill boards of over seven feet in height without permission from the city council was sustained, and the court, at page 775 said:

> "In view of the doctrine anounced in the cases cited, the bill boards have the character of nuisances, * * * The ordinance having been held valid by the highest courts of the State of New York, it must be held here that the ordinance, under the circumstances, in its most progressive scope, comes within the purview of the police power of the city. The enactment prohibiting the erection of fences and bill boards more than seven feet in height is not unreasonable, and the right of abatement as therein provided does not go beyond the extent of the police power as delegated by the supreme legislative authority of the State of New York to the city."

In the case of *Crowley* v. *Christensen*, 137 U. S. 86, an ordinance prohibiting the sale of liquor without procuring a license, to be issued by the collector of licenses only after applicant had secured the con-

sent of a majority of the board of police commissioners of the city and county, or in case of their refusal, the written recommendation of not less than 12 citizens owning real estate in the block or square in which the business was to be conducted, was sustained, Justice Field, at page 91, saying:

> "As it is a business attended with danger to the community it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licenses for that purpose. It is a matter of legislative will only. As in many other cases, the officers may not always exercise the power conferred upon them with wisdom or justice to the parties affected. But that is a matter which does not effect the authority of the state; nor is it one which can be brought under the cognizance of the courts of the United States."

In the case of *Wilson* v. *Eureka City*, 173 U. S. 32, an ordinance prohibiting the moving of a building without the consent of the mayor or other officers designated, was contended to be unconstitutional, in that it committed the rights of the plaintiff in error to the unrestrained discretion of a single individual, but the ordinance was held constitutional.

In the case of *Fischer* v. *St. Louis*, 194 U. S. 361, an ordinance of the city prohibiting the erection of any dairy stable within the city limits without permission from the municipal assembly was held to be a police regulation, and not unconstitutional as depriving one violating the ordinance of his property

without due process of law or denying him the equal protection of the laws, and Justice Brown, at page 370, said:

> "Defendant's main contention, however, is that, by vesting in the municipal assembly the power to permit the erection of dairy and cow stables to certain persons, a discrimination is thus declared in favor of such persons and against all other persons, and the equal protection of the laws denied to all the disfavored class. The power of the legislature to authorize its municipalities to regulate and suppress all such places or occupations as in its judgment are likely to be injurious to the health of its inhabitants or to disturb people living in the immediate neighborhood by loud noises or offensive odors, is so clearly within the police power as to be no longer open to question. * * *
>
> "We do not regard the fact that permission to keep cattle may be granted by the municipal assembly as impairing in any degree the validity of the ordinance, or as denying to the disfavored dairy keepers the equal protection of the laws. Such discrimination might well be made where one person desired to keep two cows and another fifty; where one desired to establish a stable in the heart of the city and another in the suburbs; or, where one was known to keep his stable in a filthy condition and another had established a reputation for good order and cleanliness. Such distinctions are constantly made the basis for licensing one person to sell intoxicating liquors and denying it to others. The question in each case is whether the establishing of a dairy and cow stable is likely, in the hands of the applicant, to be a nuisance or not to the neighborhood, and to imperil or conduce to the health of its customers. As the dispensing power must be vested in some one, it is not easy to see why it may not properly be

> delegated to the municipal assembly which enacted the ordinance. Of course, cases may be imagined where the power to issue permits may be abused and the permission accorded to social or political favorites and denied to others, who for reasons totally disconnected with the merits of the case are distasteful to the licensing power. No such complaint, however, is made to the practical application of the law in this case, and we are led to infer that none such exists. We have no criticsm to make of the principle of granting a license to one and denying it to another, and are bound to assume that the discrimination is made in the interest of the public, and upon conditions applying to the health and comfort of the neighborhood. *Crowley* v. *Christensen*, 137 U. S. 86; *Davis* v. *Massachusetts*. 167 U. S. 43; *Soon Hing* v. *Crowley*, 113 U. S. 703, 710.
>
> "The only alternative to the allowance of such exceptions would be to make the application of the ordinance universal."

As in the above case, the alternative for the city council of Chicago to the provision for frontage consents would be the total prohibition of bill boards in residence blocks as defined; and it must be assumed that the city council in making it possible by the procurement of consents to construct bill boards in residence blocks did so for the purpose of making the ordinance less drastic, so that in residence blocks, where the erection and maintenance of such bill boards would be less detrimental, as, for example, in residence blocks in the sparsely built up sections of the city, or in sections of the city where by reason of the general surroundings the evil tendencies would be reduced to a minimum, the privilege of erecting them could be granted. The persons injuriously affected

by the maintenance of bill boards so as to be nuisances are those whose residences are in the same block where the bill boards are located. The prohibition against the location of bill boards in residence blocks is for the benefit of those who reside there, and it would seem unnecessary to enforce the prohibition in blocks where those for whose benefit the prohibition is created make no objection. Section 707 does not give lot owners power to locate bill boards, but merely the privilege of consenting that a lawful ordinance against their location in such block may not be enforced there. They are allowed to waive the right to insist upon the enforcement of a legal prohibition adopted for their benefit, comfort and welfare. The operation of section 707 is made to depend upon a contingency, namely, the consent of a majority of the lot owners, but the ordinance as passed is in itself a complete prohibition. There are other requirements as to structural safety of bill boards which must also be complied with. The consent provision of section 707 affects the execution of the ordinance, not its enactment, and does not delegate to a majority of the lot owners the right to pass or even approve of it.

Illinois Rule Regarding Validity of Frontage Consent Provisions.

The Illinois Supreme Court first sustained an ordinance of the City of Chicago containing a similar frontage consent provision to section 707 in 1896 in the case of *City of Chicago* v. *Stratton,* 162 Ill. 494, in which an ordinance prohibiting the construction or maintenance of a livery stable in any block in which two-thirds of the buildings are residences, unless the owners of a majority of the lots in such

block consent in writing, was sustained on the theory that as to residence blocks livery stables were absolutely prohibited by it. We quote at length from this first decision to clearly present the position of this court and the policy of the State of Illinois with reference to frontage consent provisions of this character. The court, at page 500, says:

> "There is a general prohibition against the location of livery stables in blocks where two-thirds of the buildings are devoted to exclusive residence purposes, and then an exception to the prohibition is created in favor of blocks of the class designated, where a majority of the lot owners consent in writing to the location of a livery stable there. We are unable to see how this exception amounts to a delegation by the common council of its power to direct the location of livery stables to such lot owners. * * * The prohibition against the location of a stable in a residence block is for the benefit of those who reside there. If no objection to the location of such stable in their midst, an enforcement of the prohibition as to that block would seem to be unnecessary.
>
> "By section 49 the lot owners are not clothed with the power to locate livery stables, but are merely given the privilege of consenting, that an existing ordinance against the location of a livery stable in such a block as theirs may not be enforced as against their block. They are simply allowed to waive the right to insist upon the enforcement of a legal prohibition which was adopted for their benefit and comfort.
>
> "It is competent for the legislature to pass a law, the ultimate operation of which may, by its own terms, be made to depend upon a contingency. (*People* v. *Hoffman*, 116 Ill. 587, and cases cited.) As was said by the Supreme Court of Pennsylvania in Locke's Appeal, 72 Pa. St. 491: 'The true distinction * * * is this: The legislature cannot delegate its

power to make a law; but it can make a law to delegate a power to determine some facts or state of things upon which the law makes, or intends to make, its own action depend.' In the case at bar, the ordinance provides for a contingency, to wit: the consent of a majority of the lot owners in the block, upon the happening of which the ordinance will be inoperative in certain localities. The operation of the ordinance is made to depend upon the fact of the consent of a majority of the lot owners, but the ordinance is complete in itself as passed. What are known as local option laws depend for their adoption or enforcement upon the votes of some portion of the people, and yet are not regarded as delegations of legislative power. (13 Am. & Eng. Ency. of Law, p. 991.) Delegation of power to make the law is forbidden, as necessarily involving a discretion as to what the law shall be; but there can be no valid objection to a law, which confers an authority or discretion as to its execution, to be exercised under and in pursuance of the law itself. (*Cincinnati, etc. Railroad Co.* v. *Comrs. of Clinton Co.*, 1 Ohio St. 77.) Here, the provision in reference to the consent of the lot owners affects the execution of the ordinance rather than its enactment. (*People* v. *Salomon*, 51 Ill. 37; *Bull* v. *Read*, 13 Gratt. 78; *Aurora* v. *United States*, 7 Cranch, 382; *Alcorn* v. *Hamer*, 38 Miss. 652.) The ordinance in question does not delegate to a majority of the lot owners the right to pass or even approve of it. On the contrary their consent is in the nature of a condition subsequent, which may defeat the operation of the prohibition against the location of a livery stable in a block where two-thirds of the buildings are devoted to exclusive residence purposes, but which was never intended to confer upon the ordinance validity as an expression of the legislative will. (*Alcorn* v. *Hamer, supra.*)"

The court also distinguishes the leading case in the State of Missouri where as a matter of state policy the court holds that consent provisions constitute a delegation of legislative power, and at page 504, says:

> "The case of *City of St. Louis* v. *Russell*, 116 Mo. 248, is relied upon as announcing a different view of the present question from that which is here expressed, but the ordinance condemned in that case provided that no livery stable should 'be located on any block of ground in St. Louis without the written consent of the owners of one-half of the ground of said block.' It will be noticed that, in the Missouri case, the ordinance requiring the consent of adjacent property owners related to the entire city. Under the operation of such an ordinance livery stables might be totally suppressed and prohibited everywhere within the municipal limits. The ordinance, however, in the case at bar is not thus unreasonable, as it relates only to certain residence districts which are clearly defined. Within such specified residence districts the city council undoubtedly has the power to prohibit or forbid the location of livery stables, and, having the power of total prohibition within those districts, it may impose such conditions and restrictions in relation to their limited area as it may see fit."

Counsel for plaintiff in error cite (page 24 of their brief) in support of their contention that the frontage consent provision is invalid, the Missouri case of *Gunning* v. *St. Louis*, 235 Mo. 99 (incorrectly cited in brief of plaintiff in error as 239 Mo. 99), in which that court referring to the case of *Chicago* v. *Gunning System*, 214 Ill. 628, approved of the opinion of the court in holding the Chicago bill board ordinance there in question invalid on the theory adopted

in the State of Missouri, that consent provisions are a delegation of legislative power, and in this reasoning the Missouri court merely followed its previous decisions on similar provisions, whereas, in fact, the *Gunning* case held the provision of the ordinance then in question invalid not because of the frontage consent provision, but for the reason that the ordinance was unlimited in its application, in that it prohibited bill boards upon "any boulevard or pleasure driveway" without frontage consents.

The Supreme Court of Illinois in the case at bar (Printed Record, page 51) said:

> "The case of *City of Chicago* v. *Gunning System, supra,* is clearly distinguishable from the case at bar. The ordinance there held unreasonable and void was general in its terms and prescribed restrictive conditions in regard to the erection and maintenance of bill boards, and made no exception whether the bill boards were in a thickly settled part of the city or in an open block or field. Mr. Justice Wilkin said on this point in the *Gunning System* case: 'It must be apparent to all reasonable minds that provisions which are necessary in one of such cases would be wholly unnecessary and unreasonable in others, and that a provision might be a reasonable police regulation in the one case and in one locality which would be wholly unreasonable under other circumstances in another locality. This ordinance is, however, without qualification or limitation applicable to signs and bill boards alike in all portions of the great City of Chicago, applicable alike to every portion of its extended territory. We do not hold that this ordinance is so unreasonable as to be void if it were limited to particular districts of the city.'"

Moreover, in the case of *Chicago* v. *Gunning System,* 214 Ill. 628, the court says with reference to the ordinance there in question, at page 642:

> "There is no evidence in the record upon which to base the reasonableness of this provision."

We consider that the provision of that ordinance, so far as it prohibited bill boards along pleasure driveways and boulevards, on its face was based solely on aesthetic considerations, and is clearly distinguishable from the case at bar.

Showing the Illinois state policy with regard to ordinances, prohibiting structures and businesses in residence blocks, but permitting their location upon procuring frontage consents, we cite the following cases:

In *Swift* v. *The People,* 162 Ill. 534, an ordinance requiring the petition of a majority of voters in prescribed territory within which otherwise saloon licenses would not be granted, was sustained, the court, at page 542, saying:

> "The third objection is also practically disposed of by the same decision. If, as contended, this ordinance permits arbitrary discrimination between applicants for license because one may 'be able to get the requisite petition and another cannot,' the same is true of the one held valid in the *Stratton* case. It is conceded that the city had the lawful right to prohibit the issuing of license to keep a dram shop in the district named, and we presume it will not be denied that it might limit the number of saloons to be licensed in the district. The contention is, the requirement that the person applying for a license shall present with his application a petition signed by a majority

of the legal voters of the district asking that the license be granted, is 'a discrimination between different persons possessing the requisite good character.' It is not contended that the ordinance on its face makes any such discrimination, or that it is unreasonable if fairly and honestly carried into effect, but the claim is, that through the partiality or corruption of the legal voters of the district one man may be able to get a majority of them to sign his petition, whereas another cannot. It is said, 'Thus the rich applicant may secure his license while the poor one may not. Whim, fancy or prejudice may alone control the giving of assent.' This is asking the court to hold the ordinance void upon an unwarranted presumption. When the city council creates a local option district (as this properly is), it must be presumed that the legal voters therein will petition for license or refuse to do so, as they believe best for the community in the way of regulating the liquor traffic, and not that they will be governed by motives of personal friendship or ill feeling towards applicants for license. Certainly there may be good and just motives for signing or refusing to sign a petition, and it will not be presumed that the voters will be actuated by a bad motive rather than a good one. They may be willing that one saloon shall be kept but be opposed to more. Having signed a petition for one it would not be unjust discrimination against the second applicant to refuse to sign his petition. They might be willing to have saloons in a particular part of the district, but not in others. Certainly it would not be discrimination to sign the petition of one for the unobjectionable locality and refuse to sign the other. Under this ordinance unjust or arbitrary discrimination could only result from the misconduct of the legal voters, and for the purpose of destroying the validity of the ordinance it cannot be presumed that they will so act."

The reasoning in the above case is particularly applicable, and we believe completely answers the argument of plaintiff in error contained on pages 21, 22 and 23 of its brief, in which are enumerated illustrations whereby permission could be given to one person to construct a bill board in a residence block and refused to another.

In the case of *Martens* v. *The People,* 186 Ill. 314, the Supreme Court sustains an ordinance of the City of Moline, requiring consents as prerequisite to the issuance of saloon licenses in certain territory, and cites with approval on page 317, the *Stratton* case, *supra.*

The *Stratton* and *Martens* cases, *supra,* are cited with approval in the cases of:

Harrison v. *The People,* 195 Ill. 466, 472.
Fish v. *McGann,* 205 Ill. 179, 187.
People v. *Griesbach,* 211 Ill. 35, 40.

Frontage consents required for location of garages:

People v. *Ericsson,* 263 Ill. 368, 373.
People v. *Village of Oak Park,* 266 Ill. 365, 367.

In the *Griesbach* case, *supra,* the court said with reference to the exercise by an individual of the right given by the ordinance to consent to that which otherwise is prohibited, at page 40:

> "Those persons who are invested by such statutes or ordinances with the power to endorse or refuse to endorse the application for a license to keep a dram-shop are charged, in a degree, with a duty to the public. The determination of the propriety of signing or refusing to

> sign such an application demands consideration not only of the views and interests of the person so having legal qualifications to join in the application, but also the consideration of the rights and interests of third persons and of the general public in the vicinity. The action to be taken is not wholly in his private and personal capacity, but he must act to some extent in a public capacity. He is entrusted with a power the exercise whereof concerns the welfare of the public, and he therefore has a duty to discharge to his neighbors and other members of the community whose interests, rights, morals and safety are concerned and may be affected by his act."

The foregoing cases indicate conclusively the policy of the State of Illinois as interpreted by the Supreme Court with reference to permitting structures and businesses, prohibition of which in specified territories is proper, wherever in such territories those considered to be and actually most concerned waive such prohibition, and hold that it cannot be presumed that those who are given such privilege will act in an unreasonable or arbitrary manner.

(c) Plaintiff in error cannot urge that the frontage consent provision of the ordinance is invalid because of conjectural results from its operation, there being no showing made that the provision in fact operated in the manner complained of.

In the case of *Lieberman* v. *Van De Carr,* 199 U. S. 552, after citing the *Gundling* and *Wilson* cases, *supra,* Justice Day, at page 562, says:

> "These cases leave in no doubt the proposition that the conferring of discretionary power upon administrative boards to grant or withhold permission to carry on a trade or business

> which is the proper subject of regulation within the police power of the state is not violative of rights secured by the fourteenth amendment. There is no presumption that the power will be arbitrarily exercised, and when it is shown to be thus exercised against the individual, under sanction of state authority, this court has not hesitated to interfere for his protection, when the case has come before it in such manner as to authorize the interference of a federal court. *Yick Wo* v. *Hopkins,* 118 U. S. 356."

Applying the principle enunciated in the last paragraph of the foregoing quotation, we assert that plaintiff in eror is not in a position to claim that the property owners in blocks as defined by section 707 would arbitrarily discriminate in granting consents for the erection of bill boards.

In the case of *Sligh* v. *Kirkwood,* 237 U. S. 52, the court held that it would not consider the effect of a construction of a statute prohibiting the exportation of fruit when immature and unfit for consumption as food as prohibiting its exportation for other commercial purposes than that of food, until the state court had so construed it, and at page 61 says:

> "Furthermore, this regulation cannot be declared invalid if within the range of the police power, unless it can be said that it has no reasonable relation to a legitimate purpose to be accomplished in its enactment; and whether such regulation is necessary in the public interest is primarily within the determination of the legislature, assuming the subject to be a proper matter of state regulation."

Consistent with the above doctrine, we contend that the conjectured operation of the frontage consent provisions of section 707 will not be considered.

Plaintiff in error argues that under section 707 an owner of property in a residence block, as defined, might, without the consent of adjoining owners, "erect upon his lot a board fence in size and every other respect exactly like a bill board, and without complying with the bill board regulation as to safety, etc., which would cause every alleged evil said to be caused by bill boards; yet if, after the erection of such fence, he desires to paint thereon or fasten thereto an advertising sign, he could do so only with the consent of a majority of the owners of other property in the block."

This statement is incorrect, for the reason that all structures similar to bill boards of over 12 square feet in area are expressly made subject to the provisions of the ordinance in question by section 700, Chicago Code of 1911 (Printed Record, 33) which provides as follows:

> "Provisions of This Article Shall Apply to Other Similar Structures.—The provisions of this article shall apply to other similar structures of like size and construction without regard to their use whether erected on or near the surface of the ground or anchored to, or fastened to any bill board, building or structure."

Counsel in error rely upon three cases to sustain their contention that the frontage consent provision invalidates the ordinance.

The case of *Curran Co.* v. *Denver*, 47 Colorado, 221 (plaintiff in error's brief, p. 25), involved an ordinance which provided that no application for a license to erect a bill board or other structure designed to be used for advertising purposes shall be considered by the fire and police board until the written consent of the adjoining lot

owners and residences directly opposite to such proposed bill board, if any there be, shall be exhibited to the fire and police board together with such application; and provided that no bill board could be erected without a permit from such board. It will be noted that this ordinance was general, and thus distinguishable from the ordinance in the case at bar. Furthermore, this case followed the previous decisions of the courts of that state in holding such provisions to be a delegation of legislative power. In considering this case, the theory upon which the validity of frontage consent ordinances is sustained in Illinois must be kept in mind. Our position, again stated, is that the City of Chicago could absolutely prohibit bill boards of over 12 square feet in area in residence blocks, as defined by the ordinance, and having this power of prohibition, the frontage consent provision is reasonable. In the *Curran* case, bill boards could not be erected in any part of the city of Denver without securing consents, and it was not contended in that case that the city had the power to absolutely prohibit bill boards in the entire city, nor is it so contended by us.

The case of *Yick Wo* v. *Hopkins,* 118 U. S. 356 (cited in plaintiff in error's brief, pp. 19, 20), is distinguishable from the case at bar, for in that case the evidence clearly showed an arbitrary exercise of the power delegated to the municipal authorities to issue licenses for laundries throughout the city which without a license were prohibited. The decision in the *Yick Wo* case is explained in *Gundling* v. *Chicago,* 177 U. S. 183. Justice Peckham, at page 186, saying:

"The case principally relied upon by the plaintiff in error is that of *Yick Wo* v. *Hopkins*, 118 U. S. 356, relating to the regulation of laundries in the City of San Francisco. The ordinance in question in that case was held to be illegal and in violation of the fourteenth amendment, because, with reference to the subject upon which it touched, it conferred upon the municipal authorities arbitrary power, at their will and without regard to discretion in the legal sense of the term, to give or withhold consent as to persons or places for carrying on a laundry, with reference to the competency of the persons applying *or the propriety of the place selected.* It was also held that there was a clear and intentional discrimination made against the Chinese in the operation of the ordinance, which discrimination was founded upon the difference of race, and was wholly arbitrary and unjust. It appeared that both petitioners, who were engaged in the laundry business, were Chinese and had complied with every requisite deemed by the law, or by the public officers charged with its administration, necessary for the protection of neighboring property from fire or as a protection against injury to the public health, and yet the supervisors, for no reason other than discrimination against the Chinese, refused to grant the licenses to the petitioners and to some two hundred other Chinese subjects, while granting them to eighty people who were not such subjects and were working under precisely the same conditions. Such an ordinance, so executed, was held void by this court."

The principal case relied upon by plaintiff in error is that of *Eubank* v. *City of Richmond*, 226 U. S. 137. The ordinance under consideration in that case bears no similarity to section 707. There property owners in each block of the city were authorized to designate building lines and thereby con-

trol and dispose of the property rights of others. Section 707 does not authorize property owners to prohibit anything or to interfere in any way with the enjoyment of property rights. Section 707 itself prohibits bill boards in residence blocks, authorizing their erection therein upon certain contingencies, namely, the procuring of consents. In the *Eubank* case it was unnecessary for the Supreme Court to consider the power of the city to establish building lines without providing compensation, but if we assume that this power exists and the ordinance established a uniform building line on residence streets in the city, providing that the same would not apply on streets where the owners of a majority of the property filed a petition to this effect, then the ordinance would bear some similarity to section 707. In the *Eubank* case the property owners determined the extent of use that other owners could make of their lots. Section 707 itself determines the extent of use that owners shall make of their lots so far as the erection of bill boards is concerned. This determination is not delegated to the owners of property in the block, but the owners of property in a residence block under section 707 being protected by said section 707 from the nuisance created by bill boards of over 12 square feet surface area are privileged to waive the protection given them. The waiver of the prohibition of bill boards in residence blocks benefits plaintiff in error in affording a way in which bill boards may be erected and maintained in localities where otherwise they are prohibited.

We agree with the court in the *Eubank* case in its decision and all its reasoning, for we see no way in which the public safety, convenience or welfare are served by such an ordinance. Justice McKenna aptly says that the Richmond ordinance creates no standard by which the power given is to be exercised but by section 707 the city council sets up a uniform standard and itself exercises a power and then confers a privilege which in the absence of evidence to the contrary must be assumed will be exercised fairly and in the interest of the public safety, convenience and welfare. It must be assumed that in the City of Chicago extending over many square miles in area, there are blocks as defined by the ordinance in which by reason of the character of the surroundings and the police and fire protection afforded, bill boards might be maintained without detriment to the public. Even if property owners consented to the maintenance of bill boards in blocks where such bill boards are nuisances, this would not make the ordinance unreasonable or invalidate it, for the evils of bill boards and the nuisances created thereby affect most directly the property and people living in immediate proximity thereto, and the prohibition, being for their benefit, if they waive the same, only their rights are affected, not the rights of plaintiff in error.

While the court said in the *Eubank* case that one person having two-thirds ownership of a block could exercise the power conferred against a number having a less collective ownership, and that this consideration, although not presented in the case, must be considered and makes the ordinance un-

reasonable, we assert that section 707 does not give one person having a two-thirds ownership of a block power to *prohibit* the maintenance of bill boards by a number having a less collective ownership, for section 707 prohibits bill boards on the property of all owners in residence blocks.

Plaintiff in error contends that under the frontage consent provision of the ordinance A might be unable to procure consents, while B might be able to do so, which constitutes a denial of the equal protection of the law. Our answer to this is that such a situation is not disclosed in the record, and submit that the contention is answered by the reasoning of the cases heretofore cited. While under the other sections of the Chicago ordinance regulating bill boards provisions are made for the purpose of providing for their structural safety, it must be remembered that they are temporary structures which require constant repair (Printed Record, 84, 110) so that it would be proper for property owners to consent to the maintenance of a bill board by A who keeps his boards in repair and makes provision to minimize the nuisance and refuse consents to B, who does not do so.

We submit that the authorities cited by plaintiff in error do not support its contention that the frontage consent provision of section 707 is invalid, that the conjectural results of its operation are not properly urged in this case, and that in any event this provision is not a federal question. The only federal question is whether or not the prohibition of bill boards in residence blocks is a proper exercise of the police powers.

(d) The ordinance under consideration was passed pursuant to express power conferred upon the city council of the City of Chicago and the decision of the state court of last resort is conclusive upon this point.

Hurd's Revised Statutes of Illinois, 1913, chapter 24, Par. 696, provides as follows:

> "Be it enacted by the people of the State of Illinois, represented in the general assembly:
> "That the city council in cities and the president and board of trustees in villages and incorporated towns shall have the power to license street advertising by means of bill boards, sign boards and signs, and to regulate the character and control the location of such bill boards, sign boards and signs upon vacant property and upon buildings."

The Supreme Court of the State of Illinois in the case at bar (*Cusack Co.* v. *City of Chicago et al.*, 267 Ill. 344, 349 [Printed Record, 49]) held that the enactment by the City of Chicago of the ordinance in question was within the scope of the powers conferred by the legislature.

In *Reinman* v. *Little Rock*, 237 U. S. 171, 176; 35 Sup. Ct. Rep. 511, 513, on writ of error to the Supreme Court of the State of Arkansas, in which a municipal ordinance of the City of Little Rock, making it unlawful to conduct a livery stable within a designated area of said city, was held valid, this court said, on page 513:

> "The decision of the state court of last resort is conclusive upon the point that the ordinance under consideration is within the scope of the powers conferred by the state legislature upon the city council of Little Rock. It must

> therefore be treated, for the purposes of our jurisdiction, as an act of the legislature proceeding from the law making power of the state; for a municipal ordinance passed under authority delegated by the legislature is a state law within the meaning of the Federal Constitution."

In *Fisher* v. *St. Louis,* 194 U. S. 361, on writ of error to the Supreme Court of the State of Missouri, in which a municipal ordinance of the City of St. Louis, making it unlawful to erect any dairy or cow stable without the permission of the municipal assembly, was held valid, this court said on page 369:

> "The authority of the municipality of St. Louis, under this charter, to adopt the ordinance in question was settled by the decision of the Supreme Court, and is not open to attack here."

It follows, therefore, that for all purposes of inquiry into the validity of the ordinance in question, it should be treated as though it were a statute regularly passed by the legislature of the State of Illinois.

(e) Construction of section 707 by the Illinois Supreme Court as prohibiting bill boards in residence blocks is conclusive.

The law is well settled that the federal courts adopt the construction of statutes and ordinances given them by the state courts. It follows that section 707 prohibits bill boards in residence blocks and that the frontage consent provision is not a delegation of legislative powers.

II.

BILL BOARDS ARE OF SUCH A CHARACTER THAT THE CONTROL OF THEIR LOCATION IS A PROPER EXERCISE OF THE POLICE POWER AND STRUCTURES AND BUSINESSES NOT NUISANCES PER SE AND SUBJECT TO TOTAL LEGISLATIVE SUPPRESSION, MAY, BY REASON OF THEIR LOCATION OR INHERENT ATTRIBUTES, BE PROHIBITED UNDER CERTAIN CIRCUMSTANCES AND IN PARTICULAR LOCALITIES. THE PROHIBITION OF BILL BOARDS IN RESIDENCE BLOCKS AS DEFINED BY THE ORDINANCE UNDER CONSIDERATION IS VALID.

Counsel concede that the City of Chicago under its police power has the right to exercise a reasonable control over the construction and maintenance of bill boards and other similar structures.

For the consideration of the court, however, we cite a few cases in which legislation affecting bill boards has been sustained and refer to the evidence introduced in this case in support of our position that bill boards are of such a character that they may be prohibited in blocks as defined by the ordinance in question.

(a) Bill boards are of such a character that the control of their location is a proper exercise of the police power.

That bill boards are proper subjects of the exercise of the police power cannot be seriously questioned in view of the fact that not a single court has held that the police power could not be exercised to the extent of so regulating their construction as to

make them safer structures, not alone from the standpoint of structural safety, but also safe from the standpoint of eliminating or reducing the evil conditions surrounding them.

Different courts have decided that certain requirements were reasonable or unreasonable according to their particular notion of the reasonableness of the particular requirements and their effect in eliminating the evils sought to be done away with. None of these cases, however, specifically took up or dealt with the question as to the propriety of prohibiting their erection in residential districts.

In *State* v. *Staples,* 157 N. C. 637, an ordinance prohibiting the erection or maintenance of any bill board or similar structure in the City of Ashville used solely for the purpose of advertising, if nearer the ground than twenty-four (24) inches except when erected against the wall of a building or over a solid structure was in question, the court, at page 638, saying:

> "And in the learned and well considered brief of the counsel for the city it is suggested in support of the ordinance in question here that the same is reasonable and 'necessary to protect the public generally from the unsafe condition caused by the accumulation of leaves, papers and other waste material which accumulate against bill boards when constructed against the ground. It is a necessary restriction to protect adjoining and other buildings contiguous thereto from the danger of fire, which could so easily be conducted from such condition. It is also necessary for the purpose of keeping vacant property in a sanitary condition.' On authority here and elsewhere these considerations should, in our

opinion, be allowed to prevail and the ordinance upheld as a valid exercise of the powers conferred. *Rosenthal* v. *Goldsboro, supra; State* v. *Whitlock, supra; Small* v. *Edenton, supra; City of Chicago* v. *Gunning System,* 214 Ill. 628, 73 N. E. 1035, 70 L. R. A. 230; *City of Rochester* v. *West,* 164 N. Y. 510, 58 N. E. 673, 53 L. R. A. 548, 79 Am. St. Rep. 659; *City of Passaic* v. *Bill Posting Co.,* 71 N. J. Law, 75, 58 Atl. 343; *In re Wilshire* (C. C.), 103 Fed. 620."

In the case of *In re Wilshire,* 103 Fed. 620, the court sustained an ordinance of the City of Los Angeles prohibiting bill boards of a greater height than six feet, at page 623, saying:

"As has been seen, the thing thereby inhibited is the erection or maintenance anywhere within the City of Los Angeles, for the purpose of painting thereon or attaching thereto any sign, card, placard, poster or other advertising matter for advertising purposes, of any structure exceeding in height six feet. If the limit of height fixed by the city authorities had been 100 feet, instead of 6, nobody, I apprehend, would doubt that it came within their power to provide for the safety, comfort and welfare of the inhabitants of the city; just as they may regulate the height of dwelling houses and business blocks, establish fire limits within which no house shall be built except of brick, stone, or iron; prescribe the limits within which slaughter houses, soap factories, etc., shall only be built, etc. Any house or block may be constructed, if not prohibited by proper regulations, of such height as to shut out from the inhabitants of the city light, air or sunshine, and, when subject to earthquakes or other violent disturbances, otherwise jeopardize the health and safety of its people. The same thing is true in respect to structures built for advertising purposes, commonly called 'bill boards.' It is a matter of common knowl-

edge, and therefore within the notice of the court (*Brown* v. *Spillman*, 155 U. S. 665, 15 Sup. Ct. 245, 39 L. Ed. 304), that these are usually, if not invariably, cheap and flimsy affairs, constructed of wood, and erected on vacant lots of land along or near to streets, in order to catch the eye of the passers-by. Such structures, if of sufficient height, may be very readily blown over by wind, or shaken down by an earthquake, and in such event (depending upon their height and proximity to the public thoroughfare) may very easily cause injury to persons standing or passing thereon."

It must be remembered, in considering the ordinance in question, that it applies only to bill boards of a greater surface area than 12 square feet (section 698, Chicago Code of 1911 [Printed Record, 32]).

In the case of *Gunning Advertising Company* v. *City of St. Louis*, 235 Mo. 99, in which certain bill board ordinances were in question, the court, in speaking of bill boards, at page 145, said:

"In cases of fire they often cause their spread and constitute barriers against their extinction; and in cases of high wind, their temporary character, frail structure and broad surface, render them liable to be blown down and to fall upon and injure those who may happen to be in their vicinity. The evidence shows and common observation teaches us that the ground in the rear thereof is being constantly used as privies and the dumping ground for all kinds of waste and deleterious matters, and thereby creating public nuisances and jeopardizing public health; the evidence also shows that behind these obstructions the lowest form of prostitution and other acts of immorality are frequently carried on, almost under public gaze; they offer shelter

and concealment for the criminal while lying in wait for his victim; and last, but not least, they obstruct the light, sunshine and air, which are so conducive to health and comfort."

(b) Structures and businesses not nuisances per se and subject to total legislative suppression may by reason of their location or inherent attributes be prohibited under certain circumstances and in particular localities, and the prohibition of bill boards in residence blocks, as defined by the ordinance under consideration, is valid.

In the case of *Chicago* v. *Gunning System*, 214 Ill. 628, the court, in referring to bill boards, at page 639, says:

"No argument need be advanced that the structures described in the bill before us may become a menace to the safety of the public, and hence the subject of control and regulation. They may be erected in such a manner as to be dangerous to the public by falling or being blown down, or constructed of such materials and dimensions as to be dangerous, or placed upon buildings or other structures in such a manner as to endanger the life and limb of the citizen, or erected within the fire limits in such proximity to buildings as to increase the danger of loss by fire, or so as to obstruct the view of railroad crossings and thus endanger life by accidents, or have printed or displayed upon them obscene characters tending to demoralize and injure the public morals. If boards are erected in violation of any of these public rights or interests, and of others which might be mentioned, there is ample power within the statute to regulate them, provided such regulations are reasonably necessary for the protection of the public health, morals or safety. Nor will the mere fact

that such structures are placed upon private property, and not on the public streets, protect those owning or using them against such reasonable regulations. The police power invades individual rights and property whenever private individuals, by the use of their private rights or private property, injure the public in any of the above mentioned ways."

The court, at page 640, further says:

"All of these provisions are general in their terms and apply alike to boards erected in every part of the city. In a great city like Chicago the court will take judicial notice that bill boards are of various kinds, generally made out of a variety of materials and erected in many different localities—some in the thickly settled and business districts, where the erection of wooden buildings may properly be prohibited, or in the vicinity of electric wires, where more stringent regulations are reasonably necessary to protect the public safety, or they may be in the remote and more thinly settled territory of the city, where such stringent precautions are not necessary, while others may be on vacant tracts of land far removed from other structures of every kind. *It must be apparent to all reasonable minds that provisions which are necessary in one of such cases would be wholly unnecessary and unreasonable in the others, and that a provision might be a reasonable police regulation in the one case and in one locality which would be wholly unreasonable under other circumstances in another locality.* This ordinance is, however, without qualification or limitation, applicable to signs and bill boards alike in all portions of the great City of Chicago—applicable alike to every portion of its extended territory. *We do not hold that this ordinance is so unreasonable as to be void if it were limited to particular districts of the City.*"

That sound reason exists for the prohibition of bill boards in residence blocks appears from the evidence.

The witness McDonald (Printed Record, 127) testified that residences and homes are not equipped with fire fighting apparatus. The defendants offered to show by this witness that there are fewer fire stations and engine houses in residence territory in the City of Chicago than in other territory, and that the fire stations of the city are adequate to protect against fires for the ordinary uses of property. Such considerations were recognized by the United States Supreme Court in sustaining the validity of an act dividing the City of Boston into zones and prescribing varying limitations upon the height of buildings in the same.

This is the case of *Welch* v. *Swasey*, 214 U. S. 91, and the court, at page 107, says:

> "It might well be supposed that taller buildings in the commercial section of the city might be less dangerous in case of fire than in the residential portion. This court is not familiar with the actual facts, but it may be that in this limited commercial area the high buildings are generally of fireproof construction; that the fire engines are more numerous and much closer together than in the residential portion, and that an unlimited supply of salt water can be more readily introduced from the harbor into the pipes, and that few women or children are found there in the daytime and very few people sleep there at night. And there may in the residential part be more wooden buildings, the fire apparatus may be more widely scattered and so situated that it would be more difficult to obtain the necessary amount of water, as

> the residence quarters are more remote from the water front, and that many women and children spend the day in that section, and the opinion is not strained that an undiscovered fire at night might cause great loss of life in a very high apartment house in that district. These are matters which it must be presumed were known by the legislature, and whether or not such were the facts was a question, among others, for the legislature to determine. They are asserted as facts in the brief of the counsel for the City of Boston. If they are, it would seem that ample justification is therein found for the passage of the statutes, and that the plaintiff in error is not entitled to compensation for the reasonable interference with his property rights by the statutes."

The defendants offered to show by the witness, Cochran, that bill boards afford a protection to disorderly and law breaking persons (Printed Record, 129), and that residence districts are not afforded as full police protection as other districts in the City of Chicago of like size, and with ordinary uses of property would not require as much police protection.

The court erred in refusing to receive this evidence from a witness who was a captain of police and had been in the police department of the City of Chicago for 17 years. This witness, however, did testify (Printed Record, 129) that women and children are on the streets unescorted in larger numbers and more frequently in residence districts than in other places, and that of the crimes against women and children the most frequent are indecent exposure and offenses against the person. This witness further testified that the elements creating

crime are in the order of their importance as follows: First, absence of police, and second, darkness.

Taking up darkness as the physical element contributing the most to the commission of crimes it is apparent and requires no argument to see that the reason for this is that by reason of darkness a criminal is shielded from view, and so that which darkness does bill boards also do, viz.: afford a shield from view.

Complainant introduced evidence that it maintained lights on some of its surface bill boards, but it was shown that these lights were so placed that the space behind the bill boards remained dark, even darker than it would be were there no lights, and it is apparent that the reason why bill boards afford a protection from the view is that the view is from the front of the bill board, where many people pass, not from the rear; so we say that bill boards during the day serve the same purpose to the perpetrators of crime against women and children as darkness does at night for the perpetration of other crimes and that the crimes against women and children occur during the day when they are on the streets unescorted.

Certainly, if possible, protection for women and children should be given them and the legislation of the city council directed towards the elimination of so contributing an aid to crimes against them should be sustained if only in this respect the legislation is related to the safety, peace, good order and morals of the community.

The undisputed evidence shows that nuisances exist about surface bill boards located on private property.

It is not disputed that these nuisances which have been shown to exist have a deleterious effect on the health of those residing near the same. Mrs. Martinson (Printed Record, 92); Mr. Thompson (Printed Record, 94-99); Mrs. Stevens (Printed Record, 93); Mr. Dykes (Printed Record, 109); Mr. Fox (Printed Record, 112); Mr. Becraft (Printed Record, 113); Dr. Weber (Printed Record, 113); Mrs. Fischer (Printed Record, 114); Mrs. Smith (Printed Record, 120); Mr. Krutchkoff (Printed Record, 122); Mr. Ball (Printed Record, 121); all testified that at different locations bill boards adjoining homes have been used as a shield to afford protection for the answering of calls of nature; that not only have deposits of human fecal matter been found immediately behind surface bill boards, but that such bill boards are continuously used in such manner.

Dr. Koehler (Printed Record, 128) testified that the deposits found behind bill boards carry and breed disease germs which may be scattered in dust by the wind and by flies and other insects. That these disease germs are infectious to human beings and that women and children are more susceptible of being infected with certain of them.

The witness Rackliff (Printed Record, 107); Nelson (Printed Record, 118), and Mrs. Stevens (Printed Record, 93), testified that their homes had

been entered through windows from the side behind bill boards which cut off the view from the streets.

The witness Agnes McMahon (Printed Record, 116) and Marie Reuter (Printed Record, 120) testified that they had been insulted by a man exposing himself from behind a surface bill board.

The witness Leibovitz (Printed Record, 111) testified that the space behind a bill board adjoining his place of business had been used for illicit cohabitation.

The witness Murphy (Printed Record, 128) testified of fires existing about bill boards.

The witness Thompson (Printed Record, 100) testified as to conditions found behind nearly 100 bill boards located in different parts of the city, testifying that conditions were much worse on lots containing bill boards than on vacant lots.

Further evidence showed that bill boards are of a temporary character and that the faces on same are changed every four months or oftener (Printed Record, 84).

As to the safety of bill boards, while it was shown that bill boards, if constructed in such a manner as to withstand the wind pressure specified by the ordinances would be of sufficient strength to withstand prevalent weather conditions during the time they complied with the ordinances, it was not shown that the bill boards, after being erected for any considerable period of time would be safe, but on the other hand, it was admitted that from time to time the posts and timbers of the bill boards had to be replaced.

It was not denied that a bill board along Sheridan Road was blown over and carried all the way across Sheridan Road last year, as testified to by Mr. Dykes (Printed Record, 110), and it was stated that the faces of the bill boards are changed many times each year.

From these facts it must be conceded that bill boards are structures of a temporary character and for a temporary use for certainly vacant property is not acquired for the purpose of erecting bill boards on the same, but revocable leases are secured for such use of property.

We do not contend that bill boards are nuisances *per se*, but insist that bill boards are of such a character that they become nuisances when situated near the places of abode and homes of the people; that bill boards bear a direct relation to the conditions on the property upon which they are located and because of their character endanger the health, welfare and comfort of the people in a degree dependent upon the proximity of their location.

In the case of *People* v. *Ericsson*, 263 Ill. 368, the court sustained an ordinance similar to the one involved in this case in all of its provisions. The ordinance prohibited the erection or maintenance of garages in blocks in which a majority of the buildings on each side of the street were used exclusively for residence purposes without securing the consent of the owners of a majority of the frontage in such block. The plaintiff in this case sought to mandamus the building commissioner of the City of Chicago for a permit to construct a garage in a residence block, as defined by the ordinance, without

the procuring and filing of consents. The court, at page 372, says:

> "The power of the legislature to regulate such a business is in no way dependent upon the question whether it is a nuisance *per se*. It is of such a character that it becomes a nuisance when conducted in particular localities and under certain conditions, and it is clearly within the province of the legislature, in the exercise of the police power, to authorize the municipalities of the state to direct the location of public garages."

In the case of *City of Chicago* v. *Stratton*, 162 Ill. 494, the court in sustaining an ordinance prohibiting livery stables in blocks in which a majority of the buildings were used exclusively for residence purposes without securing frontage consents, at page 501, said:

> "While it may be true, that a livery stable in a city or town is not *per se* a nuisance, 'yet it becomes so if so kept or used as to destroy the comfort of owners and occupants of adjacent premises, and so as to impair the value of their property.' (13 Am. & Eng. Ency. of Law, p. 935.) A livery stable in close proximity to an existing residence may be injurious to the comfort and even health of the occupants by the permeation of deleterious gases and by the near deposit of offal removed therefrom."

In *ex parte Quong Wo* (1911), 161 Cal. 220, an ordinance making it unlawful to carry on a laundry business in territories previously designated by ordinance as residence districts was sustained, the court, at page 230, saying:

> "There can be no question that the power to regulate the carrying on of certain lawful occupations in a city includes the power to con-

fine the carrying on of the same to certain limits, whenever such restrictions may reasonably be found necessary to subserve the ends for which the police power exists, viz., to protect the public health, morals, safety and comfort. It is, of course, primarily for the legislative body clothed with this power to determine when such regulations are essential, and its determination in this regard, in view of its better knowledge of all the circumstances and the presumption that it is acting with a due regard for the rights of all parties, will not be disturbed in the courts, unless it can plainly be seen that the regulation has no relation to the ends above stated, but is clear invasion of personal or property rights under the guise of police regulations."

And says further, on page 233:

"The mere fact that 'large portions of the residence district are sparsely built up' cannot affect the determination of this proceeding. Doubtless it was assumed by the city council that such portions would not be 'sparsely populated' for any great length of time, an assumption probably warranted by the growth and population of the city during the last few years. So there is nothing in the action of the council in including such portions to indicate any improper design on its part. But the answer to petitioner's claim in his behalf is that his laundry is not situated within any portion of the district that is 'sparsely populated,' and that it does not appear that any place prohibited by the ordinance is maintained or is desired to be maintained within any portion of the district that is 'sparsely populated.' It follows that it does not appear that the constitutional rights of any one are invaded by the inclusion of such 'sparsely populated' territory."

In *ex parte Hadacheck*, 165 Cal. 416, an ordinance prohibiting the establishment or maintenance of a brick yard, etc., within prescribed districts in the City of Los Angeles, was sustained, the court, at page 419, saying:

> "It is not to be doubted that establishments for the burning of brick fall equally within the class of occupations which may properly be regulated by restricting the location in which they may be followed. It is immaterial to the particular point under discussion that the conduct of a brick yard is not a nuisance *per se*. 'The police power granted by the constitution is not restricted to the suppression of nuisances. It includes the regulation of the conduct of business, or the use of property, to the end that the public health or morals may not be impaired or endangered.' *Laurel Hill Cemetery* v. *City and County*, 152 Cal. 464, 474, 93 Pac. 70, 73, 27 L. R. A. (N. S.) 260, 14 Ann. Cas. 1080; *Ex parte Lacey*, 108 Cal. 326, 41 Pac. 411, 38 L. R. A. 640, 49 Am. St. Rep. 93; *Odd Fellows' Cem. Assn.* v. *City and County*, 140 Cal. 226, 73 Pac. 987; *Ex parte Quong Wo, supra.* The burning of brick is a trade which may, when conducted in close proximity to dwelling houses, be so offensive to those residing in the vicinity as to constitute a nuisance."

The *Hadacheck* case, *supra*, was brought to this court, and is reported as *Hadacheck* v. *Sebastian*, 36 Sup. Ct. Rep. 143, Justice McKenna, at page 145, saying:

> "The police power and to what extent it may be exerted we have recently illustrated in *Reinman* v. *Little Rock*, 237 U. S. 171; 59 L. Ed. 900; 35 Sup. Ct. Rep. 511. The circumstances of the case were very much like those of the case at bar, and give reply to the contentions of petitioner, especially that which asserts that a

necessary and lawful occupation that is not a nuisance *per se* cannot be made so by legislative declaration. There was a like investment in property, encouraged by the then conditions; a like reduction of value and deprivation of property was asserted against the validity of the ordinance there considered; a like assertion of an arbitrary exercise of the power of prohibition. Against all of these contentions, and causing the rejection of them all, was adduced the police power. There was a prohibition of a business, lawful in itself, there as here. It was a livery stable there; a brickyard here. They differ in particulars, but they are alike in that which cause and justify prohibition in defined localities—that is, the effect upon the health and comfort of the community."

In the case of *Reinman* v. *Little Rock*, 237 U. S. 171, in which a municipal ordinance prohibiting livery stables within a designated area, was sustained, Justice Pitney, at page 176, says:

"Therefore the argument that a livery stable is not a nuisance *per se*, which is much insisted upon by plaintiffs in error, is beside the question. Granting that it is not a nuisance *per se*, it is clearly within the police power of the state to regulate the business, and to that end to declare that in particular circumstances and in particular localities a livery stable shall be deemed a nuisance in fact and in law, provided this power is not exerted arbitrarily, or with unjust discrimination, so as to infringe upon rights guaranteed by the fourteenth amendment. For no question is made, and we think none could reasonably be made, but that the general subject of the regulation of livery stables, with respect to their location and the manner in which they are to be conducted in a thickly populated city, is well within the range of the power of the state

to legislate for the health and general welfare of the people. While such regulations are subject to judicial scrutiny upon fundamental grounds, yet a considerable latitude of discretion must be accorded to the lawmaking power; and so long as the regulation in question is not shown to be clearly unreasonable and arbitrary, and operates uniformly upon all persons similarly situated in the particular district, the district itself not appearing to have been arbitrarily selected, it cannot be judicially declared that there is a deprivation of property without due process of law, or a denial of the equal protection of the laws, within the meaning of the fourteenth amendment. *Slaughter-House Cases,* 16 Wall. 36, 62, 21 L. Ed. 394, 404; *Northwestern Fertilizing Co.* v. *Hyde Park,* 97 U. S. 659, 667, 24 L. Ed. 1036, 1038; *Barbier* v. *Connolly,* 113 U. S. 27, 30, 28 L. Ed. 923, 924, 5 Sup. Ct. Rep. 357; *Soon Hing* v. *Crowley,* 113 U. S. 703, 708, 28 L. Ed. 1145, 1146, 5 Sup. Ct. Rep. 730; *Lawton* v. *Steele,* 152 U. S. 133, 136, 38 L. Ed. 385, 388, 14 Sup. Ct. Rep. 499; *Gundling* v. *Chicago,* 177 U. S. 183, 188, 44 L. Ed. 725, 728, 20 Sup. Ct. Rep. 633; *Williams* v. *Arkansas,* 217 U. S. 79, 87, 54 L. Ed. 673, 676, 30 Sup. Ct. Rep. 493, 18 Ann. Cas. 865; *Cronin* v. *People,* 82 N. Y. 318, 321, 37 Am. Rep. 564; *Re Wilson,* 32 Minn. 145, 148, 19 N. W. 723; *St. Louis* v. *Russell,* 116 Mo. 248, 253, 20 L. R. A. 721, 22 S. W. 470."

(c) The legislative branch of the government having by the ordinance in question determined bill boards in residence districts to be injurious to the health, safety, morals and welfare of the people, the courts will not interfere if there is a basis for such decision.

As strongly stated by Mr. Justice Holmes, speaking for the court in *Laurel Hill Cemetery* v. *San Francisco,* 216 U. S. 358, 365:

"If every member of this bench clearly agreed that burying grounds were centers of safety and thought the board of supervisors and the Supreme Court of California wholly wrong, it would not dispose of the case. * * * Opinion still may be divided, and if, on the hypothesis that the danger is real, the ordinance would be valid, we should not overthrow it merely because of our adherence to the other belief."

In the case of *Armour & Company* v. *North Dakota,* 36 Sup. Ct. Rep. 440, Justice McKenna, at page 441, says:

"We said but a few days ago that if a belief of evils is not arbitrary, we cannot measure their extent against the estimate of the legislature, and there is no impeachment of such estimate in differences of opinion, however strongly sustained. And by evils, it was said, there was not necessarily meant some definite injury, but obstacles to a greater public welfare. Nor do the courts have to be sure of the precise reasons for the legislation, or certainly know them, or be convinced of the wisdom or adequacy of the laws. *Rast* v. *Van Deman & L. Co.; Tanner* v. *Little,* 240 U. S. ..., ..., *ante,* 370, 379, 36 Sup. Ct. Rep. 370, 379. It only remains to apply to the present case the principles so anounced."

In the case of *Ex parte Hadecheck, infra,* the court, at page 420, said:

"Whether or not this trade, however strictly the manner of its conduct may be regulated, can be pursued at all in a residental district without causing undue annoyance to persons living in the district, is certainly a question upon which reasonable minds may differ. If this be so, the propriety of entirely prohibiting the occupation within such districts is one for the legislative determination. The courts will not substitute their judgment upon this issue for that of the legislative body."

On the authority of the foregoing cases we contend that bill boards may be detrimental to the health and welfare of the public, and that as established by the evidence, the evil tendencies and injurious effect of the maintenance of such bill boards in residence districts leaves no doubt in reasonable minds that their prohibition therein tends to relieve a menace to the health, safety and welfare of the people.

Under any circumstances, however, we maintain that the legislative body in passing this ordinance exercised a judgment which is sufficiently supported by the evidence to make it obligatory on the courts to sustain the reasonableness of the legislation.

We respectfully submit that section 707 is valid and that the judgment of the Supreme Court of Illinois should be affirmed.

Respectfully submitted,

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